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**COMPREHENSIVE OCCUPATIONAL SAFETY AND  
HEALTH REFORM ACT**

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Y 4. L 11/4: S. HRG. 103-638

Comprehensive Occupational Safety a... **NGS**

OF THE

**COMMITTEE ON  
LABOR AND HUMAN RESOURCES  
UNITED STATES SENATE**

**ONE HUNDRED THIRD CONGRESS**

**SECOND SESSION**

ON

**S. 575**

TO AMEND THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 TO  
IMPROVE THE PROVISIONS OF SUCH ACT WITH RESPECT TO THE  
HEALTH AND SAFETY OF EMPLOYEES, AND FOR OTHER PURPOSES  
AND RELATED BILL

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FEBRUARY 9 AND MARCH 22, 1994

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Printed for the use of the Committee on Labor and Human Resources



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# ADMINISTRATION VIEWS ON THE COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

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WEDNESDAY, FEBRUARY 9, 1994

U.S. SENATE,  
COMMITTEE ON LABOR AND HUMAN RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 11:10 a.m., in room SD-430, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Pell, Metzenbaum, Simon, Bingaman, Wellstone, Kassebaum, Jeffords, Coats, Thurmond, and Hatch.

## OPENING STATEMENT OF SENATOR WELLSTONE

Senator WELLSTONE [presiding]. The Labor and Human Resources Committee will come to order.

We will have today testimony from Secretary Robert Reich and Assistant Secretary Joe Dear on the Comprehensive Occupational Safety and Health Reform Act. We will start with opening statements from members of the committee, and then we will receive this very important testimony.

Let me just say for my own part—and I will give my colleagues plenty of opportunity to comment—that I believe this testimony today, Mr. Secretary and Mr. Assistant Secretary, on this important bill is historically significant. I believe that the focus on occupational health and safety is critical to the lives of working people, but I also think it is critical to what you, Mr. Secretary, have been emphasizing and focusing on really from the very time you became Secretary of Labor, which is that we have to think of ways of bringing labor and management together, we have to think about cooperation, and we have to think about what are the key ingredients to economic performance for our Nation.

Clearly, working people have higher morale, there is more productivity, and there is more commitment to economic performance when men and women in the workplace understand that we have made a commitment as a Government to provide them with a safe working environment. It strikes me that that is elementary and basic to our conception of justice and to the values that we live by as a Nation.

So I believe that your strong testimony today in support of this historically significant piece of legislation is critically important.

I thank the two of you for being here on behalf of Chairman Kennedy, who will be here shortly, and I will now ask the ranking minority member, Senator Kassebaum, if she wishes to make some remarks.

Senator Kassebaum.

#### OPENING STATEMENT OF SENATOR KASSEBAUM

Senator KASSEBAUM. I do. Thank you, Mr. Chairman.

Mr. Secretary, it is a pleasure to welcome you back, and Assistant Secretary Dear.

I see the Secretary smiling, because I can almost imagine that he probably knows what I will say. Given the fact we all care about health and safety in the workplace, and that this is designed to be a reform of that effort, I would like to walk through why I indeed believe it is not a reform effort. The extensive mandates, the new criminal penalties, and the additional paperwork are really going to harm efforts to better address safety and health in the workplace rather than help.

If I may, Mr. Secretary, just take the opportunity to go through a few points. The key question is really whether this bill will help or hinder our effort to improve the safety. In my view, S. 575 takes the wrong approach. It mandates that employers with more than 11 employees formulate lengthy written health and safety plans. This would mean, I am assuming, that every school would have to do so; this committee should have to do so as well. Congress should not be exempt from this legislation, but we would have to work on our own requirements here in this committee and, I suppose, in our own offices.

In the legislation, they must also establish mandatory health and safety committees. In addition, the bill creates new criminal penalties for OSHA violations and expands already burdensome recordkeeping requirements.

Mr. Chairman, these mandates and the paperwork requirements serve little purpose other than to provide fertile ground for OSHA citations.

Mr. Secretary, I am absolutely amazed when you go through the list of standards that OSHA issues citations for, because the failure to maintain a written program for "hazardous materials," which is broadly defined, including irritants, which can include such things as—not to mention names—but Ivory Liquid, tops the list of the OSHA citation list.

So all of these mandates in the OSHA reform bill fall into very burdensome, uncertain categories.

The Labor Department's own data show that under current law, the most frequently cited OSHA standards involve paperwork violations. Incomplete written programs and failure to post OSHA-mandated notices really do not address the heart and core of the matter of health and safety in the workplace. We ought to consider using our limited enforcement resources more effectively to protect workers. We are missing the point, Mr. Secretary, and filling out more forms will not save more lives.

Unfortunately, the committee's OSHA reform bill simply offers more of the same. There is no reinvention here. It seems to me we have an opportunity to work less in an adversarial relationship and



more in a cooperative relationship in the workplace. When there are things that are wrong, we should work to redress those problems, rather than offering a legislative solution with tons of paperwork.

So I really feel that this is not the answer—I am sorry, Mr. Chairman. I know that Senator Metzenbaum cares a great deal about this, but I think what we all care about is finding a means to really make health and safety work better in the workplace.

Thank you, Mr. Chairman.

#### OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM [presiding]. Thank you very much, Senator Kassebaum. I think it is necessary that we work together on this subject. Let us reason together, and let us do something about it.

I have been working on this subject for a long time, and I think having you here today, Secretary Reich, with Assistant Secretary Dear is very encouraging.

Last year, I expressed concerns about the administration's attention to job safety, and I am frankly pleased that you heard my concerns, and I am sure the concerns of others as well, and you responded. By being here this morning, you are fulfilling the promise of change the President brought with him to Washington.

There is a loud and clear message to corporate America in your presence here: that we must do more to protect workers, because it is the right thing to do, and also because it is good for business.

This morning, I would like to make an appeal to my Republican colleagues. The safety and health of American workers should not be a partisan issue. But some in the business community, frankly, would like to make it so.

In 1992, the NAM told us that this bill "deals more with union organizing rights than with true safety issues." That is unadulterated hogwash. That is just not true. That comment is absurd, and it is an insult to thousands of American workers who lose their lives on the job each year.

Let me show you something. Look at this computer printout. There are many names on each of these pages. This is a list of names of workers killed on the job in the last 3 months—just in the last 3 months. It is incredible.

As a matter of fact, I think many of us saw the Wall Street Journal the other day, the left-hand column on the front page, "Workers at Risk: Chance of Getting Hurt is Generally Far Higher at Smaller Companies. Firms may be preoccupied with staying in business, lack sufficient expertise."

This is one of the most critical issues facing American workers. We have to work together to do something about it—not to figure out how much we penalize the employers, but to figure out how we can save lives, and if stronger penalties save lives, then that is what we ought to do.

And frankly, as the Wall Street Journal Article indicated, the challenge is not as much with the larger employers, who do provide more safety protections, as it is with the smaller employers, who are less inclined to do so. And it is not a matter of wanting to punish anybody. It is a question of wanting to save lives.

In 1993, the NAM told us this bill would "transform the OSHA law into a punitive, criminal statute." That is just not true. This bill would make modest and very necessary improvements in OSHA's criminal provisions, but they would remain the last resort for only the most egregious violators. Now, Senators Jeffords and Durenberger voted for these very same changes in 1990, and I am sure they would differ strongly with the NAM characterization.

So this bill is not about labor law reform, and it is not about criminalizing OSHA. In the last 3 years, I have held six hearings on this issue, and I have heard from many families about why we need OSHA reform. Let me tell you what it is about.

It is about John Paumier, who was crushed to death by a foundry elevator that was accidentally activated when he was working in the shaft. A failsafe device could have been put on that elevator that would not have cost more than a few dollars, and he would be alive today.

It is about Virginia Durand, whose hands were amputated by a stamping press that did not have a safety guard. I am sure you remember when she came before our committee.

It is about Bert Arce, who was killed with 22 others in a massive chemical explosion triggered by untrained contract workers.

It is about Linus Kreiner, who was buried alive when an unshored trench collapsed on top of him. These are real human beings who leave behind them families who hurt and cry and suffer.

OSHA reform is about Homer Stull, who was asphyxiated with two coworkers while cleaning a blood vat in a National Beef meat packing plant in Liberal, KA.

It is about 19-year-old John Dirksing, who fell 55 feet through an unprotected hole on a construction site.

It is about Vidal Rodriguez, who suffered permanent brain damage from mercury poisoning because his employer never warned him of the damages.

It is about Steven Eilar, who was crushed from the waist up by a 1,300-pound metal press after the company disconnected safety monitors.

It is about the Wall Street Journal article report of how Mario Barraza was sliced in half by a metal shearing machine.

OSHA reform is about that computer printout that I just pointed to that lists all of the workers killed in must the last three months. It is about telling the families of these workers, and thousands of families like them, that the Federal Government cares enough to get off our butts and do something to stop these tragedies.

I would say to both my Republican and Democrat colleagues that OSHA reform is about saving lives and preventing unnecessary deaths and injuries.

This morning, a coalition of over 50 groups, including the environmental community, labor unions, public health and consumer groups, and civil right leadership, announced the formation of a coalition to pass OSHA reform. I hope we can work, Democrats and Republicans alike, to get the job done.

I think the significance of this hearing is certainly confirmed by the presence of the Secretary of Labor and the Assistant Secretary.

With that, Mr. Chairman, I will turn the hearing over to you.

The CHAIRMAN. Senator Coats.

OPENING STATEMENT OF SENATOR COATS

Senator COATS. Mr. Secretary, when I first heard some time ago that the committee was going to undertake OSHA reform, I must admit my reaction was, it is about time that we reform this, because I have been deluged with complaints in my office and visits from people from Indiana. I cannot visit a business in Indiana without virtually their first complaint being, "Can you do something to get OSHA off our back, to get away from the minutiae and the multitude of forms that we have to fill out, the stupid requirements that they are imposing on us."

So I thought, finally, we are going to get to OSHA reform. But then, it was not long before my staff advised me that, no, OSHA reform is making this tougher, by not going after some of the things which are taking place within OSHA, that are causing what many feel to be an undue burden.

I think all of us on this committee and everybody in Congress support the goal of OSHA, and that is to reduce the health and safety hazards that employees face. But somewhere along the line, that goal has gotten translated into an implementation procedure that has flooded business with regulations, with forms, with overzealous inspectors who are not looking for ways to put a shut-off switch on an elevator, but are getting into some of the most meaningless and small and minute details and imposing fines.

The thing has become so bureaucratized and so flooded with forms and paperwork that it has really lost credibility in the marketplace in my opinion, and in the opinion of the people that I represent.

You know, the President talks about simplification in the health care system. But I think the reason some of us are so skeptical about that goal is because we have seen what has happened with a relatively tiny agency, OSHA, and its overwhelming impact and negative impact, on American business, particularly small business. We have visions of the same thing happening in health care, only multiplied by 100 or by 1,000, because of the scope of health care business.

When I visit plans and businesses in Indiana, not only do the employers complain, but the employees that I talk to on the line mock these regulations. You talk to some of the people on the line and they will say, you know, some of the stuff we have to do are the stupidest, most idiotic things that you can possibly imagine. As a result, the employees do not believe that many of the regulations are credible.

Now, Senator Metzenbaum said he regrets that this has become a partisan issue, and that business wants to make it a partisan issue. Well, that would be a very dumb strategy for business, since the Democrats control the executive branch and the legislative branch; for them to make it a partisan issue is not going to accomplish their goals.

The businessmen and women who talk to me say the same thing to the Democrats who represent them. They say, "I do not care whose issue this is. Let us just be cognizant of the implications of all this."

Now, Senator Metzenbaum holds up a package of material and says, these are lives that should not have been lost, and maybe they should not have been, but for goodness sake, let us focus the efforts of OSHA on what it is really intended to do and not tie some of these companies down with the minutiae and the unbelievable effect that OSHA is having and the time that they waste on things that do not make that much difference, in my opinion.

I will just give you one or two examples. There is a company in my State that makes chalk. They have got to fill out these "MSDS" forms for the chalk that they make. So I thought, well, there must be some hazard in here, and so forth and so on. I am just holding up the forms here. But there has to be separate forms filled out for white chalk, for yellow chalk, for blue chalk, and for orange chalks. Now, if they made 10 different colored chalks, they would have to fill out additional forms. They just sent me these four.

The properties on each one are exactly the same; the squares they have to check and the numbers they have to put down are exactly the same. Now, shouldn't OSHA be spending time dealing with the kinds of illustrations and the kinds of cases that Senator Metzenbaum has cited, instead of spending all their time on this?

Al Johnson is the president of a family-owned Handi-Mart in Anderson, IN. On December 5, 1990, one of his employees was held up at the Handi-Mart store. He cooperated with the robbers, but unfortunately, as is happening so much in our society today, they decided to shoot and kill him anyway.

OSHA came in and fined Al Johnson, the president of Handi-Mart, because they said that he violated OSHA's general duty clause for failure to prevent a late night hold-up.

Well, Al Johnson said, "The only way I can prevent a late night hold-up is not to be open late at night." That is just the nature of our culture and our society.

OSHA then said, well, they imposed the fine so that they could help comfort people like Weaver's wife. Now, is OSHA in the business of comforting people? Do we impose liability on employers for acts committed by criminals who are not employed for OSHA?

We came across another memo from the deputy commissioner of OSHA compliance to all OSHA division directors. He says: "The low average number of violations cited per inspection is a likely indicator that the quality of inspections performed is poor. The low average number of violations cited may be indicative and that further training in the identification of violations is needed." Maybe it is an indication that businesses are complying. I mean, that is the goal. The goal is not the number of violations cited. The goal is zero. What we want is our OSHA inspectors to come back to headquarters saying, "This company is in compliance," not to have a memo go out and say, "You are too low on your quotas. You must not be zealous enough." And that is what leads to this proliferation of paperwork and compliance regulations and everything else that our companies complain about.

So my thought and my suggestion to you, Mr. Secretary, is to let us focus our efforts on the things that really make a difference, and let us get away from this effort that is undertaken by OSHA, by a lot of people who have never had business experience—they have no idea how a company works or does not work; they are young,

zealous people who go in with grandiose ideas about bringing idealistic solutions to the workplace, and they do not even know how the workplace works—and if the employers and the employees give OSHA no credibility, then it is going to be counterproductive.

So I hope that our efforts on reform can be focused in these areas and not simply in perpetuating what is already a system that has run amok with paperwork and regulations that really do not make a hoot of difference.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pell.

Senator PELL. I have no statement, Mr. Chairman.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. No statement, Mr. Chairman.

The CHAIRMAN. Senator Hatch.

#### OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman.

Let me just start by welcoming the Secretary and the Assistant Secretary here today. We appreciate the efforts that you make, and we appreciate your desire to do what is right for workers in this society. There is no question in my mind that you have a great desire to do that. I also believe you are doing some very good things down there as well.

But let me start by saying that the goal of a safe and healthful workplace is not a Democrat versus Republican issue any more than it is an employer versus employee issue. We all agree that safety in American workplaces has to be a priority for all of us.

Now, that does not mean that we cannot disagree on whether a particular approach to achieving that goal is meritorious. Unfortunately, when we cut through all the rhetoric, the Kennedy-Metzenbaum proposal to dramatically reform the Occupational Safety and Health Act I think is an empty promise. It is not likely to make workplaces healthier or safer, and worse, I think it will divert the expenditure of precious resources away from the goal that it purports to achieve.

It may be an exaggeration to say that the legislation would really result in a net job loss, although it may very well mean that employers may be forced to lay off workers because of the enormous and costly regulatory burden they would face under this bill. These costs, I believe, would naturally result in fewer new hires.

Moreover, this bill would mean full employment for lawyers and Federal bureaucrats. We are all used to that, are we not? That seems to be the major sport in America today, making sure that our lawyers are able to survive. And frankly, this bill is going to add to that like never before. It is just what this country needs, I am sure—more lawyers and bureaucrats, and fewer workers producing goods and services and helping our society.

The Occupational Safety and Health Act was signed into law by President Nixon more than 20 years ago. That law, which emerged from a strong bipartisan effort to improve the safety and health of our Nation's private sector workplaces, was premised on the belief that the Federal Government could assist employers and employees in their efforts to achieve a safer work environment.

There have been lots of criticisms of OSHA through the years, and of course, we have seen both sides. We saw just a while back a small business woman from the Midwest in a hearing, and she brought in an enormous stack of Federal Government paperwork under which she was just, plain buried. I do not want to see that happen again.

This legislation repudiates the purposes of OSHA and substitutes a policy that is, in my opinion, solely punitive. It relies on more regulations and larger penalties. It says that putting managers and supervisors in jail will send the right message; that a bigger Federal Government and more rules and regulations will work better than genuine employer/employee cooperative efforts work today; that effective and meaningful cooperation can somehow be dictated by legislative language; that saddling already overburdened small businesses with more costly administrative paperwork will somehow translate into safer workplaces; and that adding what one study estimates will be more than \$50 billion annually to the cost of doing business in the United States is a worthwhile price to pay for what some have convincingly testified will do little to improve safety and health practices.

Two years ago, the Reverend Jesse Jackson testified before our committee in favor of this legislation. He stated that: "The answer to improved workplace safety and health is not more bureaucracy, but more democracy." Now, that is a point upon which the Reverend Jackson and I are in full agreement.

Employers working together with their employees have been effective in enhancing workplace safety and health as well as improving productivity. Today there is a real effort to bring them together and to voluntarily work together. But I would urge Reverend Jackson to take another look at the details of this legislation. What it does is lock in rigid and inflexible joint committees, which in effect transfers bureaucracy from the Government to the workplace.

I personally believe there are better ways to do it, and I am committed to working with the distinguished chairman of the committee and the distinguished chairman of the subcommittee on labor in trying to come up with ways to solve this problem, and certainly with the distinguished Secretary of Labor, whom I know is well-motivated here and wants to do what is in the best interest of all those concerned.

I am worried about this bill because I think it is going to lead to a massive fight over something that we ought to be getting together on and resolving. And I pledge myself to work with you, Mr. Secretary and Mr. Chairman, and my subcommittee chairman as well, and of course, our ranking member, who I think has added to this discussion here this morning with her cogent comments, on what really needs to be done. I will pledge myself to do that.

Thank you for coming, Mr. Secretary, and I appreciate your presence as well, Mr. Dear.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Jeffords.

## OPENING STATEMENT OF SENATOR JEFFORDS

Senator JEFFORDS. Mr. Chairman, I will just ask that my statement be made a part of the record. I will follow this legislation with deep interest. I, of course, was ranking on the subcommittee until this past year, so I will take a deep interest and hope to work to find the solutions to compromise so that we can come up with a good bill.

Thank you, Mr. Chairman.

[The prepared statement of Senator Jeffords follows:]

## PREPARED STATEMENT OF SENATOR JEFFORDS

Good morning ladies and gentlemen. It's good to be here with you today for the second hearing of this committee on the need for reform of the 1970 Occupational Safety and Health Act.

First, I believe that this is not an issue on which there is wide disagreement on the basic objective of enhancing work-place safety and health. Nor does partisan politics play a large role in determining one's views on the subject. Members on both sides of the aisle want to see workplace illness, injury and death reduced and eliminated. Not only is promoting safe and healthy workplaces in the best interest of workers and employers, but it's also necessary for the welfare of the nation. No one disputes this, and legislation in pursuit of this goal could enjoy wide support.

When OSHA was enacted in 1970 it raised hopes that the high rates of death and injury in the American workplace would be greatly reduced. To a large extent, the Act has been effective in achieving this goal. Most jobs are now safer and more healthy than they've ever been. However, no one imagines that the job has been completed. Each year, far too many Americans are still touched by the tragedy of death or injury in the workplace. Many of you here today may have had that experience.

In introducing their OSHA reform bills in the 103rd Congress Representative Ford and Senator Metzenbaum cited the still disturbing numbers which let us know there is more work to be done in this area.

—10,000 workers are killed on the job every year, one for every hour of the day;

—6,700 workplace injuries take place every day, as many as 1.7 million per year; and

—390,000 new occupational disease cases are diagnosed each year.

These are not "acceptable losses." Even a few deaths and injuries are too many. There are no acceptable losses, and I am like most members of Congress in supporting efforts to reduce them as much as possible. As I said, the issue has never been the objective, but rather the means to that objective.

Finally, the OSH Act has not been significantly amended since its enactment in 1970. There is no question but that changes have occurred in our nation which impact how we should look at and enforce workplace safety and health. It is only reasonable to reflect on those changes in the basic federal law addressing this issue.

Although I have not been a sponsor of this measure, I share with the sponsors a strong commitment to workplace safety and health

and the legislation necessary to protect it. I have also long advocated the application of Federal employment laws to all the employees of the government, including those who work for the Congress. Thus, I do have a natural affinity for the goals of this legislation.

To the extent that I have reservations about the bill, they are based on the specific provisions and mechanisms chosen to implement reform, and not because of any doubt on my part that some types of reform are needed. I continue to have concerns about the costs that will be placed on employers, particularly small employers, and the amount of safety and health those costs will buy.

I am not yet convinced that a rigidly mandated structure of programs and committees, to the exclusion of all other voluntarily reached solutions, is the best way to go in all instances. Small employers in Vermont have contacted me on this specific issue. They are worried that they will be driven away from the voluntary enforcement programs which have characterized Vermont OSHA's approach to the issue. Perhaps we can avoid these issues by building in some flexibility and incentives for employer cooperation to achieve our objectives of safer and more healthful workplaces.

I am optimistic that these concerns can be worked out, and I will continue to work with my colleagues toward that end. I look forward to the testimony today and to our future efforts on behalf of workplace health and safety.

The CHAIRMAN. Senator Thurmond.

#### OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, it is a pleasure to be here this morning to receive testimony on S. 575, The Comprehensive Occupational Safety and Health Reform Act. I would like to join my colleagues in welcoming the able Secretary of Labor, Dr. Robert Reich.

Dr. Reich, I want to commend you for your deep interest in veterans. I had the occasion to be in your Department recently, as you know, and we appreciate all you are doing to help our veterans.

The protection of the American worker is an important concern for this committee and the Congress. There are problems with workplace health and safety in some companies. However, I believe it is important to avoid—and I repeat, to avoid—more Federal mandates, more bureaucracy, and more litigation. This is particularly important given the many overly burdensome regulations already imposed on small businesses.

The Employment Policy Foundation has estimated that this legislation would cost over \$60 billion. The recordkeeping and reporting requirements as well as the creation of health and safety committees, and programs and training, will cost the private sector approximately \$42 billion.

I would like to point out this blue book right here as an example of regulatory burdens faced by the Hans Rosenow Roofing Company of Chicago. This book is a compilation of the various Material Data Safety Sheet records, which must be kept by the Hans Rosenow Roofing Company at a cost of approximately \$75,000. This is a medium-size construction firm which employs approximately



60 workers, and they have never once had a request to use the Material Safety Data Sheet records. We must question whether this type of regulatory burden has significantly improved the health and safety of Hans Rosenow Roofing Company.

Mr. Chairman, the goal of eliminating willful violations of health and safety standards is greatly desired. However, we must question whether imposing harsh new criminal penalties for willful violations of any provision of OSHA, including the health and safety plans and committees, is the best way to achieve this end.

Under this legislation, many cases that are currently resolved as civil matters could become criminal actions, which might be contested, thus causing a delay in the abatement of serious workplace hazards. A rise in the amount of criminal investigations may result from a demand of search warrants and criminal inspections. Under current law, many employers voluntarily consent to warrantless inspections. This will only contribute to the increase in litigation expenses, currently estimated at approximately \$8.5 billion under S. 575.

Very few statutes can affect the lives of Americans as much as the Occupational Safety and Health Act will. It regulates almost every worker and business in the country. We must ensure that any changes to OSHA are protective of the safety of our workers without damaging our economy.

For this reason, I believe that we must be cautious in any action we take.

Again, Mr. Chairman, it is a pleasure to be here, and I look forward to hearing from our witnesses.

Mr. Secretary, would you please consider carefully legislation in every aspect along the lines I have mentioned?

Thank you, Mr. Chairman.

#### OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. Thank you very much.

The hour is late, and I will be very brief. I apologize to the Secretary for being tardy. We had a meeting with some Massachusetts ratepayers with regard to the escalation of water rates, and it was impossible to leave that meeting in a comfortable way. So I appreciate my colleagues going ahead, and I will put my statement in the record along with that of Senator Dodd and Senator Harkin.

[The prepared statements of Senators Kennedy, Dodd, and Harkin follow:]

#### PREPARED STATEMENT OF SENATOR KENNEDY

This hearing is a special one this morning. In many ways, it is the culmination of years of effort and concern over the quality worker health and safety in this country.

In 1988, the committee conducted a series of oversight hearings that highlighted continuing safety and health problems in the workplace. Based on what we learned from those hearings and from numerous reports and studies that have identified weaknesses in current law, we began to work with members of the committee to draft legislation to reform the Act.

Since introduction of that legislation in 1991, Senator Metzenbaum and I have held a series of hearings and received testimony and comments from many witnesses, from plant workers and former OSHA administrators to employer safety representatives and public health experts.

During most of those years, our efforts to address these serious problems were hampered by a lack of interest on the part of the previous administration.

That is why it is gratifying that Secretary of Labor Robert Reich is here this morning to express the support of the Clinton administration for prompt legislative action on OSHA reform. At long last, we are able to work cooperatively with an administration that acknowledges that gravity of the unsafe and unhealthy working conditions that affect so many workers. We are ready to take constructive steps to fulfill the promise of a safe and healthy workplace for all U.S. workers. That was the promise of OSHA when it was enacted in 1970, and a quarter century later, it is time to fulfill it.

The conditions cry out for reform. In Massachusetts, almost two workers each week are killed on their jobs, and 200 workers each day are injured severely enough to lose a week or more of work. One hundred workers each month are diagnosed with cancer related to their jobs.

The stories of injury are appalling. In January 1994, a 38 year-old concrete-processing worker in Amesbury was operating a "hopper" machine which processes small gravel. Without any safety program mechanism to shut off the machine while brief maintenance was being performed, the conveyor started while the worker was still in the hopper and he was asphyxiated in the gravel.

In the last 3 months, at least 4 construction workers in Massachusetts have fallen to their death. In all of these cases, management had not provided the proper safety equipment.

In May 1993, a painter on the Bourne Bridge to Cape Cod fell to his death. The safety lines and protection equipment were inadequate for that dangerous job.

In April 1993 in Billerica, an 18 year old's first day of work for a clean-up crew was his last day. 1,300 pounds of unsecured bales of cardboard fell 20 feet and crushed him.

So far, neither private nor government responses have been adequate to address the tragedies that are happening. With the current level of available inspectors, it would take 80 years to inspect each workplace in Massachusetts just once. Lack of inspections results in real human tragedy.

In September 1992 a worker in Foxboro, MA, died after he had been splashed with hydrofluoric acid. He had not received either the OSHA required training or protective equipment.

These stories are not unique to my state. In Hamlet, NC, 25 poultry workers were killed in a fire because the plant's doors were locked and the workers could not escape. The plant had not been inspected by Federal or State officials in 11 years. I urge my colleagues to look at the statistics from their own States. When they do, am confident that these long overdue reforms will have broad bipartisan support.

Today, after many frustrating years of trying to address these problems, we welcome Secretary Reich, and look forward to hearing his comments and suggestions.

#### PREPARED STATEMENT OF SENATOR DODD

Mr. Chairman, I want to take this opportunity to reiterate once again my strong support for OSHA reform and to commend you for your leadership and perseverance in this endeavor. I am especially pleased to have Secretary Reich before the committee today to testify in behalf of OSHA reform. The administration's support is crucial to the passage of this legislation, and Secretary Reich's presence sends a very strong and positive signal.

As I have stated at previous hearings, this legislation centers on one simple premise—that a job should be a source of livelihood, not a hazard to life and limb.

The original OSHA Act made a pledge to American workers—a pledge to keep their workplaces safe and healthy. Sadly, 23 years later, we still have a long way to go to make good on that promise. Each year, 10,000 workers die on the job and six million are injured. Still others—as many as 100,000—surrender their lives to occupational disease.

This is an unacceptable waste of human capital which reaches far beyond the afflicted workers and their families. Society pays in term of increased health care and disability costs, while businesses are deprived of skilled employees. It is estimated that these costs total over \$80 billion a year.

Moreover, as I am sure Secretary Reich will agree, we cannot hope to substantially enhance our Nation's productivity when we lose so many able workers each year to preventable accidents.

The need for reform is both clear and compelling. And this legislation will take important steps to move us in the right direction.

S. 575 also includes a measure I have offered in past congresses, the Construction Safety, Health, and Education Improvement Act, to address the disturbing injury record which plagues the construction industry.

Construction workers comprise 5.5 percent of the workforce, but experience 20 percent of workplace fatalities. The fatality rate for construction workers is three times higher than that of other workers. Each year, on average, 2,100 workers lose their lives at construction sites.

I want to remind my colleagues that these numbers are really people. People like the 28 construction workers who were killed at L'Ambience Plaza in Bridgeport, CT, 6 years ago. That accident, one of the worst in history, was clearly preventable. The lives it claimed, however, represent only 1 percent of the rate of construction workers killed annually.

This legislation is vitally important to all American workers, yet it is also a reasonable and balanced approach. It is tough enough to prevent accidents and punish scofflaws, but it also incorporates measures to address some of the concerns of businesses. I am confident that if enacted, this ounce of prevention will preclude a significant number of future tragedies.

I thank the Chair, and I look forward to the testimony of Secretary Reich.

## PREPARED STATEMENT OF SENATOR HARKIN

I would like to thank the Chairman for holding this hearing. Far too many of workers, our Nation's most precious resource, are killed or injured due to unsafe and hazardous working conditions. Each year, thousands of workers are killed and millions injured on the job because they are poorly trained or not trained at all in the operation of potentially dangerous equipment or in the handling of hazardous substances. In addition, many employees are afraid they will lose their jobs if they complain about unsafe conditions or inadequate training.

Every worker has a right to a safe worksite. That was the promise made when Congress originally passed the Occupational Safety and Health Administration Act. Progress has been made but more needs to be done to make that promise a reality. Our workers are too valuable to be exposed to potentially deadly workplaces.

Additionally, we can save billions through preventing workplace injuries and fatalities. The yearly costs of injuries to workers, including medical costs and lost productivity can exceed \$100 billion. Work-related lower back pain alone is estimated to cost this nation 523 million days of lost work each year. This loss is preventable.

I look forward Secretary Reich's statement and working with you, Mr. Chairman, the members of the Committee and the Administration in making OSHA reform a reality.

The CHAIRMAN. First of all, I want to welcome you, Mr. Secretary, before our committee and to thank you for the leadership that you are providing in this extremely important area that affects the lives and the health of millions of American workers.

Listening to some of the comments that have been made, I find this indignation that has been expressed about protecting workers in our society somewhat interesting and difficult to understand. I am reminded that in Indiana, for example, it would take OSHA 33 years with its current level of inspectors to visit each company once.

Now, we have to begin to get serious about trying to provide more meaningful protection for our workers. The Federal government spends \$300 million per year to protect American workers in the workplace, and \$7 billion a year for environmental protection. Obviously, all of us are committed to the environment, but \$7 billion over there, and \$300 million here is an indication of our relative inattention to this important issue.

Two workers a week in my State are killed on the job from preventable causes. Five a day are losing their opportunity to work because of disabling injuries or illness in the workplace. It is a tragic circumstance, and too many businesses are paying more attention to their profits than to the dangers their workers are exposed to. Well, thankfully, we have an administration and a Secretary who do care.

Finally, I would just note what the experience has been in Oregon and with measures very similar to what we are proposing in our legislation. We have had testimony that businesses in Oregon have saved \$1 billion with the movement toward that system. This has real payout in terms of safety of workers, it has real payout in terms of the reduced costs for businesses, and it has real payout

in terms of increased productivity. So I am very hopeful that we, with the support of the administration, will be able to achieve it.

I want to thank you very much for joining us, and we look forward to hearing from you.

**STATEMENT OF HON. ROBERT REICH, SECRETARY, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC, ACCOMPANIED BY JOE DEAR, ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH.**

Secretary REICH. Thank you, Mr. Chairman and members of the committee.

First of all, let me formally introduce to you the Assistant Secretary for Occupational Safety and Health, newly appointed and confirmed, Joe Dear. Joe is the perfect person for this job. Joe handled and was in charge of Washington State's OSHA, the State OSHA, and from 1987 to 1992, earned the enormous respect not only of the workers, but also of the business community out there, in terms of his ability to protect workers and do it in a responsible way.

Joe, welcome aboard.

The CHAIRMAN. You are going to have fun this morning, Joe.

Secretary REICH. You are going to answer the hard questions today, Joe.

Second, Mr. Chairman and members of the committee, I want to congratulate you personally, Mr. Chairman, and also everyone on this committee for the bipartisan support and leadership you showed with regard to Goals 2000 and School-to-Work. These are extraordinarily important pieces of legislation in this committee. It is not a partisan issue; it is a bipartisan issue, and you showed it, and I want to congratulate all of you for that leadership.

Now let us turn to health. America's attention is turning to health. We are turning to health with regard to health care and the President's health care reform legislation, the Health Security Act. We are also turning our attention to health care on the job—healthy jobs and a healthy place of work.

Most adult Americans spend most of their lives on the job. Obviously, we want to make sure that those are healthy places—even this room, Senator Thurmond—bless you.

Senator THURMOND. Incidentally, you called me the other day, and I returned your call. I think you wanted me to vote for the education bill. Well, anyway, I did.

Secretary REICH. Thank you.

The CHAIRMAN. You keep calling Strom. [Laughter.]

Secretary REICH. I will definitely keep calling, Senator.

If I may submit my formal prepared testimony for the record and summarize the testimony, in fact, if you will bear with me, I would like to share with you just a very few charts we have prepared, which summarize where we are on health care at the workplace, on the health and safety of American workers, and really, how that fits into the larger issue of America's health and the health care bill we are facing, if that is all right.

The CHAIRMAN. Certainly. The statement will be printed in its entirety and also Mr. Dear's statement.

[The prepared statement of Secretary Reich follows:]

## PREPARED STATEMENT OF SECRETARY ROBERT B. REICH

Mr. Chairman, members of the committee, I am pleased to appear today before you to announce the Administration's support for your efforts to reform the Occupational Safety and Health Act of 1970.

The OSH Act has been effective, and thousands of working men and women are alive today because OSHA was created in 1970. As you can see in Chart No. 1, fatality rates have declined by more than one-half since 1974. OSHA's standards save lives. According to the Office of Technology Assessment, OSHA's rules for lead and cotton dust reduced worker exposures and illnesses significantly. Those who have examined OSHA's inspection program also conclude that enforcement works. For instance, Professors Wayne B. Gray and John T. Scholz concluded in 1991, after studying injury/illness data from 6,842 manufacturing plants, that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspection ("Do OSHA Inspections Reduce Injuries? A Panel Analysis").

Despite the achievement over the last twenty years, the continued occurrence of death, injury and illness in American workplaces is a national problem. The Bureau of Labor Statistics tells us that in 1992 over 6,000 American workers were killed due to workplace injuries, an average of about seventeen workers each and every day. Workplace deaths are not confined to certain industrial sectors; they are found across the spectrum of American industries. Chart No. 2 shows us that fatalities occur in small workplaces as well as the larger ones. In fact, according to data collected by OSHA, businesses with fewer than 10 workers account for 40 percent of all fatalities but only 15 percent of employment.

In addition, according to BLS, nearly one out of every nine workers suffers a recordable injury or illness every year. Also, the rate of Lost Workday Injuries and Illnesses as reported by BLS has been essentially stable since 1974, as we see in Chart No. 3. Moreover, the public sector is not immune from injury and illness as we see in Chart No. 4. In 1991, the incidence rate for the State and local public sector, in those States for which we have data, was higher on average than for the private sector.

There are also thousands of workers who die each year from illnesses caused by exposure to chemicals such as asbestos, silica, chromium, and carbon monoxide. As shown in Chart No. 5, the Office of Technology Assessment has reported that as many as 20,000 cancer deaths annually—more than 50 each day—may be caused by workplace exposures. The story does not end with these deaths. Hundreds of thousands of workers experience pain, suffering, and disability from work-related disorders including asthma, carpal tunnel syndrome, dermatitis, hearing loss, and neurological disease. These numbers tell me that we still have a great deal of work to do in guaranteeing a safe and healthful workplace for every American worker.

OSHA's experience of more than two decades has shown us that most workplace injuries and illnesses are not unavoidable accidents. They are predictable and preventable. We need to strengthen the tools which the Department now has and to empower employers and employees jointly to reduce or eliminate hazards from their workplaces.

The costs to society from injury and illness in the workplace are substantial. The Rand Institute for Civil Justice estimated that accidents occurring on work time in 1989 imposed costs of \$83 billion. (See Chart No. 6.) The National Safety Council estimates the total costs of work-related accidents was \$115.9 billion in 1992. Compensation for back injury alone costs American employers \$11.4 billion each year. These figures do not even include the cost of most diseases caused by occupational exposures. The Nation's health care system also shoulders untold billions of costs from occupational diseases that may manifest years after a worker has been exposed to a toxic substance at the place of employment.

In a highly competitive global economy we simply cannot tolerate the high costs of workplace injuries and fatalities. We must recognize that investment in our workers is the best investment we can make in the future. By strengthening OSHA we strengthen our ability to protect America's most precious and irreplaceable resource—its working men and women.

Beyond the quantifiable costs associated with workplace accidents and illnesses, there are the human costs of pain and anguish. Last October you heard Lisa Eilar describe her brother's tragic death after he and a co-worker were crushed in a stamping press after just five days on the job at a small auto parts plant. You also saw Vidal Rodriguez, who was unable to testify because of the severity of neurological damage he had suffered from mercury exposure at a plant in Brooklyn. These tragedies and thousands of others encountered by OSHA inspectors during their worksite visits remind us of the importance of the observation of Rene Dubos,

the renowned microbiologist, when he said that, "In a truly civilized society, protection of the worker should be regarded as the most essential, irreducible aspect of production cost."

The workplace has changed since 1970. Workplace illnesses which were barely recognized when OSHA was created, such as cumulative trauma disorders, including carpal tunnel syndrome, now make up more than three-fifths of all illnesses recorded by employers. Other recent health concerns not envisioned by the authors of the original OSHA include indoor air pollutants in office environments, HIV, tuberculosis, and hepatitis. Under the present law, our Nation has been unable to respond in a timely fashion to many emerging hazards. We need new tools to combat new dangers to America's workers.

As we consider S. 575 we should ask two basic questions: Will this bill give OSHA, as well as the employers and employees of this Nation, the tools needed to remove hazards from American workplaces in an effective and efficient way? Is it a sound investment in prevention? I believe the answer to both questions is yes. We have concluded that in its main elements your bill will strengthen this Nation's ability to combat workplace hazards. We are prepared to work with you to achieve rapid legislative action. In addition, we are prepared to suggest some changes to the bill.

Let us discuss those provisions that will be most helpful.

#### *Title I—Safety and Health Programs*

The Department supports the requirement that employers have a written safety and health program. Everyone agrees that employers and employees must have greater involvement in identifying and abating safety and health hazards. The purpose of a program is to identify and fix hazards before workers become sick or injured.

The value of preventive workplace safety and health programs has been widely recognized. America's most forward-looking companies already provide comprehensive programs in safety, quality control and other related aspects of production. The Insurance Information Institute has provided us numerous examples of companies which not only protected their workforce through safety and health programs, but realized savings in workers' compensation costs and gains in performance. The Atlantic Mutual Insurance Company reports that one of its policyholders, a manufacturer of aluminum windows, reduced the total number of compensation claims by 50 percent between 1990 and 1992, and reduced the cost of the claims by 89 percent during that period. These savings were realized after the company adopted and implemented a comprehensive safety and health program.

The value of good programs in reducing workers' compensation costs has also been demonstrated in Hawaii, Oregon, and Colorado. Because employers' workers' compensation premiums had increased by over 400 percent in a single decade, the Colorado legislature passed the Workers' Compensation Cost Containment Act of 1989. That law was designed to encourage employers to adopt well planned safety and health programs. If they do so, they are eligible for up-front automatic deductions worth 5 to 10 percent of their workers' compensation premiums. In the program's first three years of operation, over 500 employers have enrolled. These employers have reduced their accident frequency by 23 percent and their compensation costs 62 percent. Total first year cost savings were \$24 million.

In a nation of almost 6 million employers, there is no "one size-fits-all" approach to workplace safety. S. 575 wisely provides OSHA the administrative flexibility to modify the requirements for programs according to need in different types of workplaces. We look forward to discussing with the Committee how these provisions would be implemented to ensure that each employer, working with its employees, can fashion a program unique to the individual workplace while maintaining such basic elements as a method to identify and correct hazards and opportunities for employee training. Employers and employees must be encouraged to tailor their programs to fit their special needs.

#### *Title II—Safety and Health Committees*

It is inconceivable that major improvements in workplace health and safety can occur without the active involvement of workers. To provide for employee participation, the Department supports the provision of joint labor-management safety and health committees for employers with 11 or more employees.

The committee provisions in your bill include elements of flexibility which we support. Employee members must be chosen by and from the nonmanagerial workforce in a free and fair manner. It is our understanding that various methods chosen by employees, including elections, volunteers or rotational systems, could be used. The number of employee members is to be proportionate to the size of the workforce, thereby addressing the special needs of small business. We note that the House bill,

H.R. 1280, contains provisions for alternative mechanisms for employee participation. We believe that this would be a valuable addition.

In Canada, many nations of Europe, and an increasing number of States in this country labor-management committees have become a commonly accepted method for reducing injuries and illnesses and for involving employees in key workplace decisions. In the United States forward-looking companies, such as Xerox, are already using committees to solve workplace problems. Twelve States have recognized the value of employee participation in safety and health by requiring committees for some or all employers.

Employee participation and involvement are key ingredients in a "high performance" workplace and have benefits beyond safety and health. In February 1992 Professor Thomas Kochan of MIT told the House Education and Labor Committee that "an effective labor management committee serves as a catalyst for other innovations at the workplace." A number of State officials have testified that safety and health committees have improved workplace conditions in jurisdictions where they are mandated.

Oregon's experience is particularly instructive. In 1990, Oregon made the kind of public commitment to workplace safety and health that S. 575 would make for the nation. Oregon enacted a committee requirement similar to that in S. 575 but with broader application, raised its penalties for OSHA violations to Federal levels, and added seventy-three enforcement and consultation staff. The state also strengthened its requirement for a written loss control program. From 1989 (the year before reform) to 1992 Oregon's fatality rate dropped from 6.2 to 4.9 per 100,000 workers, and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work-related injuries and illnesses in Oregon construction and manufacturing are now at all-time lows.

The business community in Oregon has not been hampered by the requirements of the law—far from it. Writing about the success of the committee requirement, the Vice-President and Director of Legislation of Associated Oregon Industries said:

How successful has the mandatory safety committee program been? It is difficult to quantify. However, Oregon has enjoyed three consecutive years of double-digit decreases in overall rates. I personally believe that any true reform movement of a state's workers' compensation law must involve focusing on "loss prevention," as well as "loss control." And most certainly, the creation of a program involving mandatory safety committees is a vital ingredient of "loss prevention."

### *Title III—Coverage*

It is essential to close the gap in public employee coverage. Unfortunately, for 7 million public employees in States without an OSHA-approved program there is widely varying protection. These workers handle some of the most dangerous tasks in our society such as firefighting, hazardous waste cleanups, and sanitation work. According to the American Federation of State, County, and Municipal Employees (AFSCME), almost 200 of their members were killed on-the-job between 1983 and 1993.

We must be sensitive to the impact on the States and municipalities from the requirement not only to maintain an OSHA program but to correct the hazards found in public workplaces. However, most States are not starting from scratch. Twenty-five States and jurisdictions already provide full OSHA coverage for their public employees. The remaining States may need some assistance to develop public sector plans. Many States maintain some type of worker protection even though they are not "OSHA-plan" States and thus are not required by Federal law to protect their employees. Florida, for example, has written many OSHA standards into State law and has 29 public sector safety and health inspectors.

Nevertheless, because State governments will need time to develop and implement their response to this expansion of coverage, we believe a phase-in period that takes account of their legislative calendars would be appropriate.

In addition to addressing coverage of public sector employees, S. 575 seeks to ensure that no workers in the private sector are left with inadequate coverage because of questions concerning the jurisdiction of OSHA and other Federal agencies. Although we recognize that there have been problems in determining the appropriate agency to regulate particular hazards, we believe section 302 of the bill may not provide the best solution. The Department would be forced to review every Federal regulation affecting occupational safety and health and judge the effectiveness of the other agencies' programs. The Department's determinations that other agencies are "at least as effective" as OSHA can be challenged in court by any person. These provisions would divert OSHA resources from protecting workers to overseeing and certifying the efforts of other Federal agencies. Moreover, these provisions would call



into question the regulations of other Federal agencies; potentially causing great enforcement problems and discouraging these agencies from being pro-active in using their authority to supplement or improve their regulations. The Administration wants to work with you to develop an alternative that recognizes the need to avoid duplicative regulation while also ensuring that all employees have adequate safety and health protection.

#### *Title IV—Standards*

Setting standards is one of OSHA's most important functions. We realize that we must do a better job of setting priorities since OSHA does not have unlimited resources. We must focus on those health and safety issues that present the greatest hazards to workers. We must also continue to provide compliance assistance, such as information, education and consultation, to enable employers to understand and comply with OSHA's rules.

I agree that standards must be developed in a more timely and efficient manner. The process must be streamlined. For that reason I do not object to meaningful timelines in which OSHA must complete regulatory steps or to procedures for judicial review of alleged agency delay. I understand the Chairman's intent to be that the deadlines in the bill will create a presumption of reasonableness, but that special factors will allow modification in individual cases. OSHA must be free to assign appropriate priorities to rulemaking projects and to allocate more resources to higher-priority standards. I do not believe the intent of the bill is to deprive OSHA of its necessary authority to establish rational priorities.

In the interest of making certain that the statutory timelines are realistic, I would suggest that they be lengthened somewhat—that the standards for Secretarial action and judicial review be changed to recognize the Secretary's responsibility to set OSHA's agenda and priorities. For example, it would be appropriate for OSHA to have 120 days rather than the 90 currently in the bill to respond to petitions; and 18 months, rather than the 12 in the bill, to propose a standard following a decision to do so. Basic principles of administrative law require a regulatory agency to issue a detailed and complete proposal if it hopes to proceed expeditiously to a final rule that can be upheld on judicial review. Thus, we think it appropriate for OSHA to have equivalent amounts of time for preparation of proposed and final standards.

I am pleased by the language in S. 575 prohibiting judicial challenges to OSHA's feasibility findings if those challenges were not first presented to the agency during the rulemaking process. This concept—exhaustion of administrative remedies—is so sensible, and so widely accepted, that we believe it should be expanded to cover all of the findings OSHA must make in promulgating a standard.

In addition, we think that the courts should review OSHA standards under the same criteria that they use for most other Federal regulations—that the standards should be upheld if they are not arbitrary or capricious. The current substantial evidence standard has been taken by some courts as a signal that Congress intended especially strict scrutiny of OSHA standards, and so has contributed to many of the court remands that have played a significant part in clogging the regulatory pipeline.

I also wish to express my support for establishing uniform criteria for both health and safety standards. Having different criteria applicable to safety and health standards is making it difficult for OSHA to regulate because it is not always clear how a particular standard should be classified. Thus I believe that uniform criteria for health and safety standards would strengthen OSHA's standard-setting capability.

Title IV would also require that OSHA issue as a standard the final Permissible Exposure Limits rule originally promulgated in January 1989. The PEL revision issued in 1989 was designed to update exposure limits that were more than 20 years old. OSHA estimates that the PEL reduction would have prevented about 55,000 occupational illness cases and approximately 520,000 lost workdays each year. However, the courts have placed such a difficult burden of proof on OSHA that it has become nearly impossible to regulate more than a few chemicals at a time. In striking down the PEL revision in 1992, the 11th Circuit Court of Appeals stated that:

Unfortunately, OSHA's approach to this rulemaking is not consistent with the requirements of the OSH Act. Before OSHA uses such an approach, it must get authorization from Congress by way of amendment to the OSH Act (AFL-CIO v. OSHA, 965 F.2d 962, 987).

As a result of this decision, many workers remain exposed to hundreds of chemicals at levels that most experts from labor and industry consider obsolete and dangerous. This situation requires a legislative solution. We also support the principle that OSHA and NIOSH should work closely together to review and revise the PELs at regular intervals.

I also agree that PELs should cover employees in the construction, maritime, and agriculture industries. OSHA has already proposed such action, but without legislative action its fate is uncertain. Legislation enacting the limits but allowing the Department to conduct rulemaking on feasible means of compliance may be the most appropriate solution.

The bill's requirement for OSHA to promulgate standards on ergonomics, exposure monitoring, and health surveillance is consistent with OSHA's stated priorities. Particularly important is the need for an ergonomics protection standard to reduce the alarming numbers of preventable musculoskeletal injuries as shown in Chart #7.

#### *Title V—Enforcement*

Where employees are seriously hurt by the willful violations of their employers, criminal prosecution is warranted—both to punish and to deter similar conduct in the future. Various statutes enforced by the Environmental Protection Agency contain criminal provisions with lengthy prison sentences. For example, under the Clean Water Act the maximum penalty for knowing endangerment, without even the occurrence of a death or injury, can include imprisonment of up to fifteen years. By contrast, OSHA's sanctions for employers whose willful conduct causes death are limited to a fine and/or imprisonment for 6 months. We support the provisions of S. 575 that increase to ten years the maximum prison term for willful violations causing death. We also support the provision which allows OSHA to charge officers, management officials, and supervisors with criminal willful violations. We understand that this is intended to apply only to those management officials who have the power to bring about compliance, including the power to remove an employee from exposure to a hazard. By making willful violations involving death a felony, S. 575 enables the government to prosecute and punish the small proportion of employers who are the truly "bad actors"—those who have shown a willful disregard for the lives of their employees.

The Department also supports criminal penalties for willful violations that result in "serious bodily injury" to employees. Our understanding is that "serious bodily injury" will include only those injuries which have the most serious consequences.

Fears about criminalizing all of OSHA enforcement are vastly overblown. In Fiscal Year 1993 there were only about 600 inspections involving willful violations out of a total of 101,000 inspections conducted that year (Federal and State OSHA). Only a subset of the 600 inspections involved serious bodily injuries caused by willful violations. Fewer than 50 of these inspections involved a death in the workplace.

Also important is the provision in Title V that guarantees State and local law enforcement agencies the right to conduct prosecutions under generally applicable criminal laws. There has been considerable litigation on this issue and uncertainty in some States as to whether such prosecutions may proceed. S. 575 codifies the role of State and local prosecutors who wish to enforce generally applicable criminal laws in cases involving safety and health at the workplace. Adding their resources to those of Federal OSHA will enable us to cast a wider net over the employers whose conduct is criminal in nature.

The Department of Justice joins us in supporting each of these criminal provisions.

The reform bill would make a number of other changes in enforcement. Under S. 575, for the first time employers would be required to abate serious violations presenting a substantial risk to workers during the period after an employer has contested the citation and before the final decision of the Occupational Safety and Health Review Commission. A provision of this nature is necessary to ensure that workers are not endangered during contest periods that can last up to several years. Abatement during contest is not a new concept to the Department. The Mine Act gives MSHA this authority. Experience indicates that it is neither burdensome nor unworkable.

Concern has been expressed that employers would be forced to make costly alterations to the workplace only to see OSHA's citation overturned on appeal. S. 575 provides protection for employers by ensuring that they will not be penalized for nonabatement if the Review Commission upholds their position.

The Department recognizes the valuable role played by employees and their representatives in enforcement under the Act. It is therefore our firm policy to consult with them in inspections and case settlements about all matters related to abatement. However, we are unable to support those provisions of the legislation that would overturn Supreme Court precedent and impair OSHA's ability to settle contested cases. The bill would authorize the Review Commission to review and disapprove citations and settlements negotiated by OSHA with an employer on the basis of employee objections on a range of matters. Authorizing such challenges

could only delay and complicate final settlement and implementation of the agreed measures for abatement. Moreover, the prospect of such a challenge would remove an important tool for encouraging settlement that OSHA has under current law: the employer's knowledge that agreement to the agency's terms will clearly and finally resolve the dispute.

Placing authority in the Commission to disapprove settlements is institutionally unsound as a matter of principle. Case settlements involve consideration of several factors, including the need for prompt and effective abatement, evaluation of the strength of the case and litigation risk, the Department's overall enforcement strategy, and efficient use of resources. As the agency responsible for enforcement of the Act, the Department must make policy judgments that determine the final balance among these factors. I emphasize our commitment to consulting employees and obtaining their input as a vital ingredient in this determination.

We also cannot fully support the bill's approach to informal complaints. If OSHA were required to conduct an inspection in response to each informal complaint received, resources would be shifted away from inspections targeted to high-hazard workplaces. Moreover, we have found that a less formal response—for example, letter investigations and phone inquiries—can often resolve these complaints and lead to prompt abatement. We agree, however, that every bona fide complaint, even if not in writing, deserves a response from the agency. We have begun working with Committee staff on an amendment that would require an appropriate investigation and follow-up to verify abatement.

Finally, we support the provision in Title V which codifies current OSHA case law recognizing that employers have a defense against citation for unpreventable employee misconduct.

#### *Title VI—Discrimination Protection*

The Department supports provisions to enhance protection for workers who exercise their rights under the OSH Act. If employees hesitate to exercise their rights for fear of losing their jobs, these rights are meaningless. Section 11(c) of the OSH Act is designed to prevent discharge or discrimination but in practice workers have not been adequately protected. Witnesses before this Committee have described discrimination cases that took years to resolve while they suffered loss of income and other economic hardship.

Title VI would address this problem and would make the OSH Act discrimination provisions more consistent with those found in other laws such as the Surface Transportation Assistance Act which protects whistleblowers in the trucking industry. Particularly helpful is the provision of Title VI which extends the deadline for filing complaints of discrimination to 180 days and the provision allowing the Department to grant preliminary relief to workers when there is reasonable cause to believe that discrimination has occurred. Title VI would afford increased protection for workers who choose to exercise their rights under the OSH Act.

#### *Title VII—Technical Assistance and Training*

OSHA's full toolbox must include strong provisions for consultation and technical assistance which complement agency regulations and enforcement powers. I fully support the bill's requirements to target these special services to small business and high hazards. I also would be pleased to implement your innovative ideas on regional/State safety resource centers with tri-partite representation.

#### *Title VIII—Recordkeeping and Reporting*

Title VIII addresses the need for better and more specific data on the industries, individual work establishments, and work processes which have the highest rates of injuries and illnesses. We have recognized for many years that OSHA's data systems for occupational safety and health are inadequate. OSHA needs additional site specific data to target its efforts to the most dangerous workplaces. Title VIII contains provisions which would enable the Department to use its resources more effectively by gathering more specific safety and health data.

While Title VIII would enable OSHA to better meet its data needs by establishing an appropriately structured administrative data base, I must emphasize the equally important need to preserve the independent national safety and health statistics produced by BLS. At present, BLS collects confidential data from respondents to produce its Survey of Occupational Injuries and Illnesses and its Census of Fatal Occupational Injuries. The Department is studying the effect of OSHA's collection of site specific data on the ability of BLS to collect accurate information from employers to produce both the Census and Survey, and we expect to share our findings with the Committee in the near future.

*Title IX—National Institute for Occupational Safety and Health*

Regarding the bill's provisions affecting NIOSH, the Department of Health and Human Services has one strong concern that we note on their behalf. HHS agrees that this bill would fundamentally improve workplace safety and health. However, HHS opposes the provision that would remove NIOSH from within CDC and establish it as a separate agency in the Public Health Service because that would disrupt important scientific and organizational links between NIOSH and CDC to the detriment of both and, ultimately, workers. HHS would welcome the opportunity to work with the Committee on this and other issues raised by the bill.

\* \* \* \* \*

*Title XII—Construction*

The reform bill would increase protection for workers in the construction industry, which has one of the highest rates of injury and illness (13.1 per 100 construction workers versus 89 per 100 workers for all private industries in 1992). This industry, which makes up five percent of all private employment, accounts for fifteen percent of fatalities.

Under present law, OSHA has not been able to address fully the unique hazards found in the construction industry. Unlike fixed-site manufacturing firms, the work done at construction sites is constantly changing. The most dangerous operation of the day may only last for 45 minutes. When OSHA arrives at a construction site, the work may be completed. These difficulties are compounded by the fact that there may be dozens of different employers on a single large construction site. Finding out who is responsible for which hazards can be a daunting task. OSHA needs better ways of identifying the most hazardous construction sites at the most dangerous times.

Title XII would help reduce injuries and illnesses on construction sites in a number of ways. Construction employers would be required to designate individuals with overall responsibility for safety and health at the site. Construction employers would be required to have safety and health programs and workplace plans tailored to the unique hazards of the industry. The reporting requirements would assist OSHA in identifying which construction projects to inspect and when to visit the site. If stricter reporting had been in effect in 1987 the tragic accident at the L'Ambiance Plaza in Bridgeport, Connecticut might not have occurred. Twenty-eight workers might still be alive. A similar accident several months earlier had not come to OSHA's attention since no one was killed.

Generally, the Department supports those provisions which ensure that safety and health become a built-in feature of daily activity on construction sites without depending upon the threat of an OSHA inspection. As with many features of your bill, the construction provisions represent practical ideas which have been tested by numerous employers and found to work. The Corps of Engineers and its contractors, for example, have realized injury rates far below the national average by implementing comprehensive programs with many of the elements required by your bill.

While many of the provisions in Title XII are needed, the organizational changes included in the bill are not necessary. OSHA's construction efforts can be improved under its current organizational structure. We also have concerns about the affect of applying all the provisions in Title XII to small construction projects.

There have been some concerns expressed—particularly within the business community—about the financial impact of OSHA reform. The cost of this bill is a valid concern. We should not impose unnecessary costs or regulations on any sector of our economy. After studying the legislation carefully, OSHA preliminarily estimates that the bill's investment in employee protection will result in a meaningful net benefit to our economy. We will be prepared to share and discuss our estimates with the Committee in the near future.

The critics of OSHA reform fail to consider the opportunities which the bill presents for investment in prevention of disease and injury. As you see in Chart No. 8, the cost of workers' compensation benefits was more than \$40 billion by 1991. Total workers' compensation costs in 1991 were \$53.8 billion. In an article in the *Journal of the American Medical Association* (August 7, 1991), Dr. Philip Landrigan estimated that 350,000 new cases of illness each year are caused by occupational exposure. According to the National Safety Council the tangible costs of workplace injuries and illnesses exceed \$100 billion each year. This figure includes direct costs only and does not even attempt to attach a dollar amount to the savings in human life, and avoidance of pain, suffering, and disability. I have discussed those provisions of the bill which would enable us to be more effective in reducing workplace injuries, illnesses, and deaths. Meanwhile OSHA is not sitting on its hands. OSHA is considering a number of new initiatives to enhance its effectiveness, such as

changing data collection to target compliance resources more effectively, streamlining the inspection process to increase the agency's efficiency, and encouraging worker-management cooperation in occupational safety and health.

Mr. Chairman, you have taken an important step in presenting this comprehensive reform bill. It not only provides OSHA with new ways of accomplishing its goals; even more importantly it empowers employees and encourages employer-worker cooperation to undertake new ways of preventing injuries and illnesses in American workplaces.

[The charts referred to may be found in the files of the committee.]

Secretary REICH. The first chart is a chart showing that we have made some progress as a society and as an economy with regard to fatality rates. We are still not there. We still have a long way to go. In 1991, the last date for which we have comparable data, we had 6,000 fatalities at the workplace. That is not good. But compared to where we were in the early days of OSHA, we have made some progress, and for that, you can take some credit, and we can all be quite confident that workplaces are becoming safer. We still have a long way to go.

This chart shows lost workday injury and illness rates, lost workday cases. Now, we still have not made progress with regard to lost workdays. You can see that the incidence rate per 100 full-time workers has made very little progress on injury and illnesses. It is about where we were in the early 1970's.

Let me turn to the next chart, which shows the recordable injury and illness rates, public sector versus private sector. This is based on recordable data, public sector and private sector. Basically, the point here is that there is a problem in the public sector, as well as, in the private sector. We need to be aware that workplace safety does not end at the private sector's threshold, at the doorways to factories and places of private business.

Senator Kassebaum, you talked about the importance of maybe Congress being aware of workplace safety and health. Well, yes, I would underscore that. State and local governments need to be aware of workplace safety and health. It is a problem all across America.

Senator Metzenbaum, you referred to the Wall Street Journal piece on small business. This chart confirms the concern expressed in that Wall Street Journal article. This shows the distribution of fatalities reported to OSHA—these are reported to OSHA—by establishment size. You can see that the very small businesses here—one to nine employees—account for 40 percent of the fatalities; only 15 percent of the employment, but 40 percent of the fatalities in the United States. And again, we can see that although very, very large businesses still have a problem, the problem of workplace health and safety in terms of preventing injuries and illnesses and preventing particularly fatalities is a major problem with regard to small businesses.

Senator Coats, you talked about the problems that some small businesses have with filling out forms. Well, I can tell you our goal is to reduce that kind of paperwork, but make sure simultaneously that we get these fatalities down and that we ensure worker safety. There is no reason why a worker in a small business should be less safe than a worker in a large business, and I am sure you agree with that.

The next chart shows deaths from illnesses and injuries on the job by source of problem, the cause of death and the cause of injury. This is based upon the best data we have. You can see that motor vehicle/highway, workers who are in cars and trucks, do account for some of the fatalities, but percentage-wise, a smaller percent than air, water, rail, and vehicle highway accidents. Obviously, homicide—let me draw your attention to that—homicide is a growing problem on the job. Equipment, facilities and tools—a number of incidents we have recorded even in the past year, in which workers simply have not had the adequate safety equipment.

But then take a look at this. We are talking about injuries and illnesses traceable to the workplace. Cancer—an estimated 20,000 deaths a year now traceable to the workplace. There was a report yesterday, and many of the newspapers today were filled with accounts of that report, that cancer deaths are increasing in our society. Well, an estimated 5 percent of cancer deaths are traceable to the workplace—to chemicals, to air particles, to other causes of cancer.

And then look at illnesses that do not include cancer—we are way up to almost 30,000 a year—lung disease, heart disease, various other diseases not including cancer—again, a very large toll with regard to human suffering and with regard to the Nation's health care bills. We are talking about human beings, but we are also talking economics.

Occupational fatalities.

Here, I want to report the latest data we have on disorders associated with repeat trauma. These are a new kind of disorder. We never used to have these disorders. A lot of them are associated with people in office buildings who are doing the same typing, a lot of clerical problems, with regard to muscles, neuromuscular problems; it is repeat trauma to the neuromuscular system. And those repeat trauma injuries are increasing at a rate far faster than the normal injury rate. This to some extent is a symptom of our changing the nature of work in America. More and more people are doing more and more work behind desks, behind computers, in the factory of the future, or the factory of today, which is the office tower.

Workers' compensation disbursement. This gives you some indication of the trend and some indication of the problem we are facing—certainly an indication of the problem we are facing financially as a country in terms of health care. Some of this represents increasing health care costs, but not all of it. This is also increasing injuries, increasing illnesses at the workplace. You can see this trend right upward.

Senator METZENBAUM. How does that relate to the inflation rate?

Secretary REICH. This is faster than inflation.

Senator METZENBAUM. Faster.

Secretary REICH. This is faster than inflation. This is after inflation. This is in 1990 dollars, so this is controlled. This is 1990 dollars, but as I said, some of this is the inflation in health care costs, which are rising in some cases three times faster than inflation, but not all of it. Even if you controlled for health care cost inflation, you would still have an increase here in workers' compensation costs.

Senator Coats, Senator Kassebaum, you were talking about costs to business. This is one of the fastest-rising costs to business—workers' compensation costs. We get some control over accidents and illnesses at the workplace. We get some control directly over this. Businesses are suffering because of this cost, as well as individuals.

Now, finally let me talk about work accidents relative to injury costs in society generally. I am talking now about all injury costs. Here, we are not even talking about illnesses; we are just talking about accidents.

You can see over here that in terms of accident frequencies, work accidents constitute about 20 percent of all injuries—motor vehicle accidents, another 20 percent; other accidents, about 60 percent of injuries—but look at the costs. Again, for Americans concerned about health care costs, not just the human suffering—and the human suffering is obviously an enormous cost—but look at those health care costs. Accident costs, 47 percent of all of the injury costs in the United States, \$82.3 billion—and that is just injuries; that does not include that chart I had on illnesses, on cancer, and other illnesses.

We have a problem, and that problem is not going away. In many respects, the problem is increasing. And I am sure that there is bipartisan support for doing something about this. And I am sure that there is bipartisan support for doing it in a way that reduces unnecessary paperwork and that emphasizes prevention.

I am pleased to appear before this committee today to announce the administration's support for your efforts to reform the Occupational Safety and Health Act of 1970. Mr. Chairman, Senator Metzenbaum, it has been nearly a quarter-century since Congress passed the Occupational Safety and Health Act, and in that time, America's workplaces have in some respects become safer. But the problems remain—not just statistics. In the past year, I have talked to many spouses of workers who were killed on the job; I have talked to the children of workers killed on the job; I have talked to the parents of workers killed on the job. You have talked to them as well. These are real human stories.

There is a lot of pain and suffering out there.

The Rand Institute of Civil Justice estimates that in 1989, the cost of accidents was \$83 billion. The National Safety Council says that in 1992, the total cost of work-related accidents was \$115.9 billion—just accidents, not illnesses. Workplace illnesses and injuries also burden an already beleaguered health care system.

When I became Secretary of Labor, I set up a task force. The goal of the task force was to look at how to reduce the accidents, the illnesses, and the injuries that we are seeing increasing. We discussed a variety of options with many, many key groups. We listened carefully. With these discussions in mind, we have concluded that the main elements of the bill before you will reduce workplace hazards and boost the health of both the American worker and the American economy.

Experience in States that adopted elements of this bill shows the significant safety and health improvements that can result. Oregon's experience is directly on point, Mr. Chairman. In 1990, Oregon made the kind of public commitment to workplace safety and

health that this bill, S. 575, would make to the Nation. Oregon enacted a committee requirement system similar to that in S. 575, with broader application; raised its penalties for OSHA violations to Federal levels; and added 73 enforcement and consultation staff. The State also strengthened its requirement for a written loss control program.

From 1989—that is, the year before the reform—to 1992, Oregon's fatality rate fell from 6.2 per 100,000 workers to 4.9, and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work-related injuries and injuries in Oregon construction and manufacturing are now at an all-time low.

Workplace safety and health improvements need not create meaningless divisions, unleash bitter "either/or" arguments. A healthy workplace benefits everybody. It benefits the good workplace. It benefits good employers. We have a lot of evidence that the best employers, the most profitable companies in America, already pay attention to workplace safety and health. They have plans for health and safety; many of them have committees.

I have analyzed in my written testimony those provisions of the bill that would more effectively address workplace injuries, illnesses and deaths. Here, let me very, very briefly outline six key concepts in the bill that I believe are absolutely critical to making it work.

The first is prevention. This legislation requires employers to establish and carry out health and safety programs to identify and fix hazards before workers become sick or injured. OSHA's experience over the last 20 years demonstrates that most workplace accidents are really not accidental; that with sufficient preventive steps, many of these accidents could have been avoided. Prevention is far better than getting in there after the fact, after somebody has been killed or injured, and trying to issue a fine or a penalty. We want to prevent this from happening.

As is frequently the case, the States, in their role as laboratories of democracy, have shown the way not only in Oregon. Because workers' compensation premiums increased by over 400 percent in a single decade, the Colorado legislature passed a law designed to encourage employers to adopt well-planned safety and health programs not unlike these. Employers who did so were eligible for up-front automatic reductions of 5 to 10 percent of their workers' compensation premiums. Employers enrolled in programs have reduced their accident frequency by 23 percent, and they have reduced their compensation costs by 62 percent. The total first year cost savings were \$24 million. Now, we are talking about savings to the employer.

The second concept is flexibility. In a nation of almost 6 million employers, there is not going to be a "one-size-fits-all" approach to workplace safety. This legislation provides OSHA the administration flexibility to modify requirements for workplace safety and health programs.

We envision that each workplace will fashion a program that contains basic elements found in all programs, but that is tailored to meet that workplace's special needs.



In addition, the bill's technical assistance provisions target special help to small businesses and businesses with significant hazards in order to help them design programs fine-tuned to fit their circumstances.

The third important concept here is cooperation. We simply cannot improve workplace health and safety without including those who actually spend their days in the workplace. This is a principle that I have seen across the United States. Front-line workers know how to improve productivity, they know how to improve quality, and they know how to improve safety. They are there on the front line, and that is where the wisdom is. You have got to get them involved. If you really want a prevention program that works, you get the front-line workers involved directly in preventing accidents.

I have gone around this country for the past year, and I have talked to workers. I ask them: Do you have ideas for how to improve productivity? Of course. Do you have ideas for how to improve safety? Yes. Some of their ideas seep upward. In the best workplaces, they get right to the top. In the worst workplaces, the ideas stay at the bottom.

In keeping with this principle, the committee provisions in the bill provide flexibility in how members of these work committees, these management-labor committees, are selected, what size these committees have to be. Many major companies have already instituted health and safety committees composed of workers. Their success, coupled with successes in 12 States that already require such committees—12 States—shows that this idea can work.

Now, once again, Oregon's experience in mandating committees is particularly instructive. The business community in Oregon has not been hampered by the committee requirement—in fact, far from it. The vice president and director of legislation of Associated Oregon Industries has said, and I quote: "The creation of a program involving mandatory safety committees is a vital ingredient of loss prevention." This is from the business group in Oregon.

The fourth concept is expanded coverage. Public workers, as I demonstrated with those charts, handle some of the most hazardous tasks in our society—cleaning up toxic waste, collecting garbage, fighting fires. One public employee union, AFSCME, reports that over 200 of its members were killed on the job between 1983 and 1993. Yet in States without an OSHA-approved program, some 7 million workers receive only spotty health and safety coverage. This bill addresses the coverage gap for public employees.

In addition, the reform bill would increase protection for workers in the construction industry, whose rate of injury and illness is about 50 percent greater than in other private industries. Although the construction industry employs only 5 percent of all private employees, it accounts for some 15 percent of fatalities. We have got to help the construction industry help itself.

Title XII of the bill contains several provisions to help reduce injuries and illnesses on construction sites which, because of the nature of the industry, have been difficult to address under present law. These ideas have been proven effective.

The U.S. Corps of Engineers imposes requirements on its contractors for written safety and health programs, worksite analyses,

hazard prevention control measures, safety and health training, almost exactly the same. Between 1984 and 1988, the Corps of Engineers contractors registered an average lost workday case rate of about 1.5 per 100 full-time workers. Now, that is in contrast to the national rate, which was almost 7 per 100 workers.

The fifth concept is streamlining standards. Setting standards is one of OSHA's most important functions, and this bill streamlines that process. We do not like red tape any more than American business likes red tape. Red tape is not going to help American workers. This streamlining function establishes uniform criteria for both health and safety standards.

One important aspect of the bill is that it would require OSHA to issue its standards on hundreds of chemical exposure limits that were struck down by a court in 1992. This rule would have prevented about 55,000 occupational illnesses and approximately 520,000 lost workdays each year.

The sixth concept is enforcement. We can do all the prevention we can; we can help American employers be more responsible, and it is in their interest to be more responsible. But we have also got to be tough enforcers.

Professors Wayne Gray and John Sholz studied almost 7,000 manufacturing plants. They found that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspections. Having tough standards on the books is meaningless unless we are prepared to enforce them. If an employee is seriously injured on the job, and an employer's willful health and safety violations are to blame, that employer must be prosecuted. We simply cannot tolerate employers who regard citations by OSHA as the cost of doing business and maintaining unsafe work practices.

This bill contains provisions, supported by the Justice Department, that increase penalties for willful violations that cause death or serious bodily injury and that provide the Government authority to prosecute the officials with the power to bring a company into compliance—willful violations—let me emphasize, willful violations.

Ideally, we will never be forced to impose these provisions. Their mere existence, we hope, will deter the most egregious violations.

This bill, of course, is not without its opponents. We respect the right to disagree, but let me assure you that our position is the product of very careful study and very careful thought. For 10 months, we looked over this, we looked over its provisions. A committee of some of the best minds I could find looked at it, reported back to me and made their recommendations.

In today's economy, where capital and information cross national borders instantly, a Nation's competitive advantage comes from the only resource that stays more or less fixed within its borders—its workers—not only those workers' skills, but also those workers' health. That is why the centerpiece of this administration's economic strategy is investing in our workers' skills, abilities, capacities to innovate; investing in health and safety is a part of this strategy.

The OSH Act has improved many American workplaces over the last 2 decades, but some enduring problems, along with a new set of workplace hazards, demand that the statute be revised. This bill

makes those revisions in a strategic and sensible way, by emphasizing prevention, flexibility, cooperation, expanded coverage, streamlined standards, and tough enforcement, the bill ensures that tomorrow's workplace will reach new levels of health, safety and productivity, and will do so in a responsible way.

Mr. Chairman, you have taken an important step in presenting this comprehensive reform bill. It not only provides OSHA with new techniques for accomplishing its goals; it also empowers both employers and employees to jointly undertake new ways of preventing illnesses and injuries on the job.

I commend you for your efforts, and I look forward to taking your questions and working with all of you on making this bill a reality.

The CHAIRMAN. Very good. We will try to follow a 7-minute rule for questioning. I understand we are going to vote around one o'clock or so, which will probably affect the hearing, and we will play it by ear, but at least follow that procedure at the outset.

We thank you for your statement and for reviewing with us the current situation and its adverse impact, on the lives of workers, and on employers, as well as the overall cost to our economy.

We have heard from a number of different business groups at our hearings, and part of our problem has been that NAM and other business groups have been pretty good at criticizing the existing system and finding fault, but they have not really come up and said what they are really for. The NAM and others say that health and safety committees are just a way to increase unionization, that that is what this program is all about, and yet the evidence shows that this has not been the circumstance in the places where health and safety committees have been tried, and in fact, many of those who are involved in union organizing say that, to the contrary, the existence of health and safety committees makes it harder to organize because one of the principal arguments for unionization is to give workers a voice in addressing dangerous conditions on the job.

I think we are now in a situation not unlike health care, where many business groups did not have any position until finally the administration took a position, and then the business community began to come forward with some alternatives. Obviously, we want to try to build on common ground.

In the time I have, I would be interested in hearing a little bit from Mr. Dear who, as I understand, administered the occupational safety and health program in the State of Washington. With the OSHA reform bill, we have something that is somewhat unique in terms of legislation, and that is we have some very practical examples of how these programs we are proposing have worked in real life terms, not just theories of what might happen, but real examples. So I would like Mr. Dear to explain how this really became a fact of life in the State of Washington.

And Mr. Secretary, I want to ask this question before someone else does. Critics will say, Well, if what you are proposing is already happening in Oregon, and it is happening in Washington, and in Colorado, why should we be doing national legislation? Why not let the States do it? If this is really good for business, then businesses will understand this own self-interest, and they will eventually come to do this on their own. So why do we really need legislation?

I would like to ask you that first, and then I will ask Mr. Dear if he would be kind enough to tell us, in the time that we have left, what has happened out in Washington, and briefly, what the results are.

Mr. Secretary.

Secretary REICH. Senator, although several States have had successes in this area, not all States are doing it, quite frankly. This is a national problem. Workplace injuries, illnesses and fatalities continue to be a national problem, and a growing national problem. The Nation is saddled with that health care bill which keeps on growing every year. National competitiveness is in all of our interests, and avoiding workplace injuries and illnesses and fatalities is in all of our interests.

The States, as has been noted many times before, are laboratories of democracy. That is where we learn what works. We have learned what works from the States, and we are now lifting it up to the benefit of all workers, all across the country.

I might finally add that I believe it is in the interest of American business not only with regard to saving workmen's compensation costs, not only with regard to having a stronger and more competitive work force, but also instead of facing slightly different systems in a lot of different States, it is in American business' interest to have a uniform system.

The CHAIRMAN. Mr. Dear.

Mr. DEAR. Thank you, Mr. Chairman.

As you know, I was the administrator of the Department of Labor and Industries in Washington for over 5 years, and deputy head of that agency. When this committee began its work on OSHA reform, we received a call asking about our experience with Washington's regulations requiring employee committees in workplaces with 11 or more workers and for written safety and health programs in virtually all establishments. They wanted to know if it was controversial. Well, I can assure you as a Government administrator who ran workers' comp, safety and health, and other regulatory programs, that I would get a lot of letters from employers and workers, complaining about things we did or did not do. I never had any letters about the requirement for safety committees or safety and health management programs.

The reason is that since 1946, it has been a requirement in the State of Washington. It is an accepted way of doing business. The fears that some express about how these committees would operate simply have not materialized in the State.

I can speak with some further experience about that, because before I entered Government service, I worked for the State AFL-CIO, and I would have known if we had intended for committees to be Trojan horses for organizing.

Your observation that employer attention to safety and health is actually one of the progressive ways of dealing with worker concerns takes away the organizing issue, in essence.

So programs and committees work. I have seen the personal experience of employers who were desperately concerned about their businesses because of rising worker compensation costs accept the challenge and accept the responsibility as managers to commit to safety and health, to involve their workers, and have seen dramatic

reductions—over 50 percent in certain cases—in their workers' compensation costs, because of their commitment to worker involvement and effective management.

As Secretary Reich pointed out, you have the experience of 12 States that have worker participation requirements; 6 States in the past year have added these requirements. We now know from their experience that this is desirable, effective policy, and it is time to expand it to the rest of the Nation.

The CHAIRMAN. What is the reaction generally of the business community in the State of Washington to this? Are there business leaders who want to free Washington from the encumbrance of being required to have these safety committees? Does anybody go out and campaign and say, "We want to get these kinds of rules and regulations off our backs so we can deal with it in our own way"?

Mr. DEAR. No, not at all.

The CHAIRMAN. Do you think there might be if there were a lot of red tape and inefficiency about it?

Mr. DEAR. I am sure if the administration of the law were such that it materially impaired the businesses' ability to function, and increased their cost of doing business, there would be a loud and clear call to the legislature and to the Governor to make a change.

The CHAIRMAN. I only have a couple minutes left, but could you just briefly tell us about other State experiences that you know about—maybe you would like to comment on Oregon briefly, but other States as well. Obviously, you have a good knowledge of what other States are doing as well.

Mr. DEAR. I think the Oregon case is illustrative, because there was concern when the requirement was imposed by the legislature. But the practice bore out that, gee, this works; this really helps.

You have seen States like Florida, Tennessee, Minnesota, all over the country, different regions, different political environments, stepping up to the challenge of rising costs of workplace injury and illnesses and deciding that as a public policy, it is desirable to give workers a voice.

The CHAIRMAN. Finally, tell me what workers really bring to this process, by participating in these kinds of meetings and committees? Can you give us some examples of suggestions or recommendations that they might have that can make some impact in terms of the safety of the workplace?

Mr. DEAR. Many times, workers come up with extremely practical solutions to conditions at work—adherence to safe work practices; changes in the work environment that are relatively inexpensive modifications that result in reduction of injury and illness.

Let us face it—if you are working, you know what is dangerous about your job, and if somebody asks you how to make it safer, what are you going to think? You are going to think, "They care about me," and your whole attitude about your work is going to change if those ideas that you have are implemented. You get more productivity, as has been pointed out, you get lower costs of workers' compensation, you get a more competitive business.

The CHAIRMAN. You have convinced me.

Senator Kassebaum.

Senator KASSEBAUM. Thank you, Mr. Chairman.

First, I would just like to say, Mr. Secretary, that I have always been impressed with the thoughtfulness with which you approach issues. This is a bipartisan effort, but I have some serious reservations about this bill. And unfortunately, as with most things, in our desire to fix something where there are certainly additional things that need to be fixed, we sometimes go overboard. And I just want to be able to sort through some of these things and understand them. And certainly, Assistant Secretary Dear, you have had a good record in Washington State.

On these committees, though—the reform bill says “each work site of the employer”—so it would be per work site if you have 11 employees or more. Is that correct?

Secretary REICH. Yes.

Senator KASSEBAUM. Let me go back to the schools again. Would that include each elementary and each secondary school?

Mr. DEAR. Yes.

Senator KASSEBAUM. Is that how you have it in Washington?

Mr. DEAR. Yes.

Senator KASSEBAUM. Each school has a health and safety committee, and they draw up their plans?

Mr. DEAR. Right.

Senator KASSEBAUM. The teachers do that?

Mr. DEAR. Within the workplace, whether it is public or private, a school or a business. Obviously, you have in an educational institution a very similar set of hazards.

Senator KASSEBAUM. Well, it just seems to me it would take a lot of time for teachers to do this.

Secretary REICH. Senator, if I may, because although I do not have the direct experience that Joe Dear has, I certainly have spent a lot of time over the past year and then in my former life, talking to workers, visiting a lot of work sites, public and private.

To set up one of these committees and to develop a plan for workplace safety does not take all that amount of time. Really, it can take a very little amount of time. What it does is it focuses attention to the people who usually know better than anybody else how to improve workplace health and safety. There is a hazard around that can easily be abated. What can we do about it? It is a problem-solving team.

And as you saw from the graphs and charts that I provided, workplace health and safety is an issue everywhere.

Senator KASSEBAUM. Well, it is, that is very true, and it is true that the consumers, the workers, play a major part in that themselves. From the standpoint of fatalities, isn't it correct that 40 percent of the fatalities are due to fatal transportation accidents, and that for women, the leading cause of death on-the-job is homicide—isn't it true that is the highest fatality for women on site?

Mr. DEAR. That is correct.

Senator KASSEBAUM. Which is a rather shocking figure, in light of the fact that no matter how much you might deal with health and safety issues, that aspect of it would prove to be difficult to address.

Secretary REICH. Senator, let me say two things. We are dealing, obviously, with injuries, fatalities and illnesses. There are going to be certain things that, no matter how you—

Senator KASSEBAUM. Right. I am just pointing to the fatalities.

Secretary REICH. Sure—no matter how you try to avoid it, it may be very difficult to avoid. But as you saw again from the graphs, many of these things are avoidable, and they are avoidable at relatively low cost.

You mentioned the time. Let me just mention that a sampling of employers who currently have safety committees shows that the average committee has five members; each committee member spends an average of one to one and a half hours on committee business, including travel time, training time, support staff, other duties, in addition to the one and a half hours—it is just 1 monthly meeting—for an average of three hours per month per member.

The Employment Division—and I believe this is from Oregon—applying these numbers for members' time and wages, an effective employer's average annual fiscal impact should be—and again, the number I have here is \$349 per committee member per year.

Now, again, given the amount of safety and health prevention—the amount of safety and health that you buy, the amount of accident prevention, illness prevention and fatality prevention that we see from Oregon and Washington and several of the other States—that is a very, very small price to pay.

Senator KASSEBAUM. Let me just say I think there is certainly a strong feeling in the Senate—and I would assume in the House as well—that we really should find a better way of reform of OSHA, and that is what we need to get at here, and that is why I am asking these questions. It is not to be saying it will not work. I have serious reservations about the additional paperwork involved.

But let me just give you an example of what drives people up the wall. This is a Dave Barry column which I am sure you have probably heard about, and a true event in 1993. People say, oh, well, do not just give us the worst-case scenario—and I have used that myself—but it is stories like that that cause people to ask why we have to reform OSHA in the way that your bill does. There were two plumbers at a job site who rescued a backhoe operator who was buried in a collapsed trench that fell on him. OSHA fined the plumbers' employer because the rescuers did not have approved hardhats, and there was a \$7,000-some fine, which was dropped, I understand, because for one thing, Senator Dirk Kempthorne intervened and called attention to it.

But it is that kind of thing that highlights the need to bring some common sense to the very requirements that are important. And when it is said that we do not have alternatives, yes, indeed there are alternatives—the Vice President offered some in his "Reinventing Government" when he recommended allowing private sector health and safety auditors to evaluate workplace safety programs. Would this be something that you think would be a good idea?

Mr. DEAR. Yes. Let me talk about OSHA stories for a moment, because we all know them, and we all pick them up when we explain the line of work we are in.

Senator KASSEBAUM. Yes. And I am sympathetic because I do not like worse-case scenario stories, either, but they cause the public to be really skeptical.

Mr. DEAR. And as you pointed out, when that particular instance was drawn to someone's attention, the citation was withdrawn. But I think we have an opportunity to write a new OSHA story, an OSHA story about saving lives and preventing serious injury and protecting the health of workers; an OSHA story that focuses on the most serious threats to worker health and safety and then makes changes in resource allocation, be it enforcement or standards or education and training, that will make a real difference.

Committees and programs in the workplace really will be a new approach to OSHA, and there is certainly room within that approach for ideas like those of the National Performance Review.

Let me give you an illustration. Suppose I came in, and I said, gee, I would like to have OSHA have the capacity to inspect each work site once a year and to have a program in each one of those work sites. How many compliance inspectors will we need to add to OSHA's payroll in order to do that? The answer is about 20,000, and the price tag would be about \$2 billion if we count in what we would have to provide to the States so they can match that effort.

This bill, through its requirement for programs and committees and their work to inspect not once, but four times a year, would enormously increase the reach and range of safety and health. I mean, this really is a new approach. We are saying let us turn the attention to workplace safety and health to the workplace, not to a bureaucracy that is down the street from this building.

Senator KASSEBAUM. Who would inspect four times a year instead of once?

Mr. DEAR. Well, my illustration was that with this bill, the workers and the employers themselves would do that work. There will be a plan, and there will be a committee.

Senator KASSEBAUM. And so they could audit their own workplace safety.

Mr. DEAR. That is the whole point. That is the whole point.

Now, the National Performance Review idea says there may need to be independent, third party verification of these plans. And I think in certain particularly hazardous industries, that may well be the case. We want to test this out in certain enforcement settings. I am very pleased to learn that some professional associations like the American Society of Safety Engineers and the American Industrial Hygiene Association are talking about what do we need to do to have a core of certified professionals who could meet that need.

But there is no suggestion that we give up enforcement in order to have third party inspections. It is not a supplementation. It is an augmentation of that work.

I think there is great opportunity in this area.

Senator KASSEBAUM. Well, I think there is great opportunity, as I said earlier, to reform OSHA. I would hope we could have a system that would not just be adversarial, but to try, because the purpose is to work together, to improve workplace health and safety, and not just to impose fines. Fines obviously are there as a stick, but I would hope the reform bill is not designed just to collect fines.

Secretary REICH. Right. Senator, if I may, one way of envisioning this is that there are two models of how to go about improving health and safety at work. One is the old model, which is like any



old regulatory model—they command and control and enforce and penalize. When you have 9 million workplaces in the country, and you have a very limited number of inspectors, it leads to all sort of picayune inspections and regulations, a lot of the stories that you and I and others have heard over the years. And unfortunately, at the end of the day, you still have the problems, many of the problems that we have been talking about, and I charted some of them getting worse and worse, and some employers looking at fines as simply the cost of doing business.

There is a second model suggested by this legislation, which is prevention and collaboration at the workplace between workers and managers. And instead of getting into the picayune and trying to inspect every, single site, what you have is, with regard to enforcement, particularly going after those employers who are willfully negligent and punishing them, so it is not a cost of doing business.

So you are creating a set of incentives that better match the kind of incentives that will get you health and safety at a reasonable and responsible cost.

Senator KASSEBAUM. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Mr. Secretary, I address myself to my colleague from Kansas.

Senator Coats mentioned before the amount of paperwork that had to be done, and maybe there is too much paperwork. I do not know, but it sounded to me as if he was making a good case. But if there ever were a situation where a piece of legislation calls for us to work together, this it it—we need to do something to prevent these deaths. These are the toughest deaths; these are the deaths of a loved one going to work in the morning and his wife being called and his family being told he or she lost their life on the job.

Now, these worker committees have the potential—and the reality—that they are saving lives, they are providing safety mechanisms. And one of the things I do not quite understand is why we get so much opposition from employers, because when they have a loss of a life or an injury, it is charged against their workers' compensation. It is not something that they can just turn their backs on; it is charged against them.

There are some problems in this world that we cannot solve. But there are other problems that we can do a hell of a lot toward solving, and this is one of them.

I have worked with the Senator from Kansas before, and some of the other members on the other side of the aisle, and we have been able to reason together and to achieve the necessary objectives. But on this issue, we have been trying to do something in this area for the last 6 years. We know the administration was opposed, and now this administration is supportive. I do not want this to be a question of getting 51 votes; I want to get 85 or 90 votes.

So I just hope that the Senator from Kansas and the Senator from Vermont and the Senator from Minnesota and the Senator from Indiana and the other Senators on that side of the aisle will see fit to move expeditiously. Let us craft a piece of legislation that

maybe is not everything that Senator Kennedy wants, or that this Senator wants. But let us go 75 or 80 percent of the way. There is no reason for all of these people to lose their lives. It is incredible. If you lose your life in a war, it is understandable, but the fact is we are losing so many lives to worker injuries, and this is a problem we can do something about.

So I just implore you, I beseech you, I entreat you, I beg you—let us move with dispatch; let us move a bill to develop worker committees, to make it possible to work with the Secretary of Labor, who is certainly knowledgeable in this area, and let us save the lives that can be saved.

I say to you that I am willing, as one member of this committee, to negotiate, to be malleable, but let us get the objective done today. Tomorrow is too late. We should have done it yesterday.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Metzenbaum. Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Secretary, it is good to see you, as always, and I compliment you on the excellent job you are doing.

There is a provision we put in the Senate bill in 1992 at my suggestion, which is based on a success we have had in my State of New Mexico. Specifically, in our State, we have had very good success at getting employers and union leaders to jointly establish a Safety Resource Council, which has taken on significant responsibility for identifying the worker safety problems in our State and trying to deal with those, of course, without any legal authority to deal with them, but basically, working with the employers involved, working with the unions involved to see if those problems could not be solved.

We put a provision in the Senate bill, which is in Section 701, which provides that the Secretary can award grants to establish or support the functioning of regional or State safety resource councils or centers, which would work with employers and employees to deal with this.

I wanted to ask you whether you have given any thought to that, or the Assistant Secretary, whether he has given any thought to that or had experience that kind of thing occurring in Washington or any other State. It seems to me that this is very consistent with what the Vice President had in his National Performance Review, that we get some folks in the private sector—so that you do not have to have more people on the Government payroll—that you get someone in the private sector to take ownership of this problem and deal with it in a real way.

Secretary REICH. I could just say one thing. I have heard about the successes that you have had in your State, Senator, and I have also heard that other States are at least interested. Because workers' compensation costs keep going up so rapidly, there is more and more interest in research and training and developing institutes that will improve the knowledge among the employer base and also employees with regard to worker health and safety practices.

But Joe, maybe you have some direct knowledge.

Mr. DEAR. Yes, sir. I have experience with the construction industry in my home State, which saw an alarming increase in the

number of fatalities on the job. We convened a construction advisory committee with labor, with management, union, and nonunion contracts, looked at the data, and over a couple of years developed programs that intervened in that, and produced a sustained decrease in workplace fatalities.

I commend the program you have in your State. OSHA grants for education and training can be among the most effective use of OSHA appropriations possible because it accelerates the transmission of information about what works in the workplace, and cooperative programs find that common ground between workers and employers that produces tangible economic and human benefits for all.

Senator BINGAMAN. Let me also refer to a reference you make on page 7 of your testimony. You refer to the House bill as containing a provision for alternative mechanisms for employee participation, and indicate that that is a provision you think is worthwhile and should be adopted as part of our legislation as well.

Maybe you could elaborate on that. I think the concept of building flexibility into this legislation is one that appeals greatly to me. You have said several times here that one size does not fit all; we have very different circumstances in different parts of the country, different sized employers, different types of employers have very different circumstances. Do you have other thoughts about what we could do to this legislation to ensure that flexibility so that you do not have unreasonable requirements being imposed?

Secretary REICH. I think, Senator, that the House provision is a good possibility. The notion is that we want employees, particularly employees who are closest to where the potential hazards might be lurking, to have a voice. Now, how do you ensure that voice? There may be a variety of possible ways. You do not want to tie the hands of employees or employers; there may be different circumstances. It may be that you want employees to be rotated through some sort of committee; maybe some sort of rotation system is good. Maybe there ought to be some participation based upon interest or based upon a vote.

There may be a variety of ways of doing it. The important point is that they have a voice and that they have an unintimidated voice to point out, locate, and identify potential hazards.

Senator BINGAMAN. On this issue of too much paperwork, is there something we could do in this legislation, or is there something you can do to take that problem head-on? We constantly hear about it, and the preparation of these plans is going to be a monstrous undertaking; the recordkeeping requirements are too much. What can we do to ensure that those requirements are not more than they need to be and still get the job done?

Mr. DEAR. Well, OSHA is starting with its own paperwork requirement. We ask our compliance officers if their field operations manual, their guidebook, if you will, could be simplified. It is over 700 pages long today, and that is our own guidance to ourselves. They came back with a 90-page version of that document, a much more streamlined approach to inspection. So we are starting with ourselves.

We will this year bring forward changes to the recordkeeping requirements. This will allow us to address issues for electronic reporting, to take advantage of information technology, and to simplify that requirement.

We do need to keep data, accurate data, about what is happening in the workplace. We cannot manage effectively without it. We do need to be concerned about the paperwork requirements associated with transmitting information about hazards. But we also need to be concerned about the fact that we only have 25 health standards in our regulations, and there are thousands and thousands of chemicals out there that may have toxic properties.

I think we can use this bill to address both sides of these concerns.

Senator BINGAMAN. That is all I have, Mr. Chairman. Thank you very much.

The CHAIRMAN. Thank you.

I have just a few additional questions, and I think you have answered most of them, but I would like to just make sure we have a complete record.

Is this really legislation that will require another massive new bureaucracy in order to implement it?

Secretary REICH. Let me begin with that, Senator, and say that I think this is a piece of legislation that prevents a massive new bureaucracy. Getting those people who are closet to the potential hazards engaged in ferreting them out and preventing them is a far better alternative than trying to police every workplace in America and having literally armies of Federal bureaucrats and employees going around, issuing citations.

This gets to the core. This is a preventive measure, and this elicits the enthusiasm, interest, knowledge, and understanding of the people who are on the front line.

The CHAIRMAN. How about those who ask, isn't this going to cripple American business with a lot more costs, is this another mandated program that will saddle American business?

Secretary REICH. Well, we are reviewing every cost estimate that we have found. As I said, we have data from States that have undertaken these kinds of programs, and those data suggest that these are not expensive programs. And certainly, when you consider the costs avoided—both the economic costs, workers' compensation, the problems of lack of productivity, lost workdays and so forth, and also when you consider the human costs. But we are sensitive to that, and we are reviewing that, and we will continue to review those data.

The CHAIRMAN. For the reasons you have outlined, it would certainly appear in Washington, Oregon, and these other States that they have achieved dramatic savings for business.

On the issue of including public workers under the coverage of the act—is that something that is important to you and the administration, having coverage for those workers as well?

Secretary REICH. Yes. Public workers do need to be included. As I indicated in my opening statement, and the charts revealed it, workplace hazards do not stop at the door to the private sector, and there is no reason that public sector employees should be any less

protected or exposed to any greater hazards than private sector employees.

The CHAIRMAN. This would apply to the Senate, I imagine, as well, and to Congress. I think we will certainly make sure that it will.

Now, you exclude—not completely—but you exclude employers with less than 10 employees, and yet your chart shows that in too many instances, these are the worksites where the greatest risks exist. Why shouldn't they be covered as well?

Secretary REICH. Well, they are not excluded. They are included with regard to developing plans and concentrating on how to avoid workplace hazards and improve health and safety. The judgment was that with regard to committees themselves, that was a little bit too much of a burden with regard to workplaces under 11, and I think the judgment was probably correct that we could, simply by focusing attention on the smallest of businesses and developing a plan and ensuring that they are focusing their attention on that problem, get a great deal of improvement in workplace safety.

Joe, do you want to add to that?

The CHAIRMAN. Yes. What do they do in these 12 States, Mr. Dear?

Mr. DEAR. I am not aware of States that have a committee requirement below 11 employees.

The CHAIRMAN. What happens in Washington for the smaller employers?

Mr. DEAR. Well, we do require, as your bill would, the program, and that gets the discussion going—okay, what are the hazards in this workplace? How can we eliminate these hazards, or what do we have to do to have precautions in place? How can we manage a program? That conversation in a workplace with 10 or fewer workers can be done informally.

The CHAIRMAN. And it has been effective there?

Mr. DEAR. Yes, sir.

The CHAIRMAN. Maybe you could give us some additional information and find out for us what is happening in these other States that have been doing it, how they have dealt with it and their own evaluation of what is working and how it is consistent or not consistent with this legislation.

On the food safety inspector training, ever since the Hamlet poultry plant fire in 1991, OSHA has been trying to work out an agreement with the Agriculture Department's Food Safety Unit to make sure food safety inspectors are trained to recognize occupational hazards.

I understand an agreement was finally reached last week between the two agencies, and training will begin no later than 4 months from now. Will you keep us informed if there are any further delays?

Secretary REICH. Yes, absolutely.

The CHAIRMAN. And maybe you could give us your response about how valuable you think that is. I guess I ought to be asking with regard to seafood as well; I do not know what you are doing in terms of that area, so let me propound a question to you just to find out where we are in some of those areas.

I want to thank you very much for being here. As you can gather from the tone of this hearing, we want to try to really focus on the legitimate areas of concern of members and try to find ways of coming to grips with them. And I must say this is a very, very helpful presentation, and I think the testimony, particularly of Mr. Dear in terms of the real world practical effect of this, is enormously helpful and valuable.

So we will ask if members have additional questions that they get them to you by the end of this week. This is important legislation, and we have every intention of moving on it.

We thank you again, Mr. Secretary.

The committee stands in recess.

[Whereupon, at 12:50 p.m., the committee was adjourned.]

# FURTHER PERSPECTIVES ON OSHA REFORM

TUESDAY, MARCH 22, 1994

U.S. SENATE,  
COMMITTEE ON LABOR AND HUMAN RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:00 a.m., in room SD-430, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Wellstone, Kassebaum, Durenberger, and Hatch.

## OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We will come to order.

This morning, we continue our hearings on reform of OSHA, the Occupational Safety and Health Act. OSHA was enacted in 1970, but it has become increasingly clear in recent years that it has failed to achieve its promise of a safe and healthy workplace for the Nation's workers.

Since 1988, the committee has conducted a series of hearings that have spotlighted OSHA's problems. We have heard from many witnesses, including OSHA administrators, worker representatives, and employer representatives. Last month, Secretary of Labor Reich, and the current administrator of OSHA, Joe Dear, testified before the committee in favor of S. 575, the reform legislation that Senator Metzenbaum and I have introduced.

Today we will hear from members of the business community about the bill. We will also hear from representatives of public workers, who lack basic safety and health protections because of loopholes in the current law. In addition, we will hear testimony from the commissioner of labor of Minnesota, one of the growing number of States which has required employers to adopt safety and health programs and safety and health committees.

Eleven States now require employers to adopt safety and health program, and 12 require employers to maintain employer/employee committees at worksites. The experience of these States demonstrates the importance of these requirements. In State after State which has adopted such preventive and cooperative measures, the injuries and workers' compensation costs have shown significant declines. The chart on my right is a clear indication of where States have been moving over the period of the recent years. Some progress has been made, but workers in the other States do not have the kinds of protections that the legislation provides.

In Oregon, where safety and health committee requirements and other reforms were enacted in 1990, injury rates have dropped by

10 percent, and employers have saved more than \$1 billion in workers' compensation and related costs.

Some business groups oppose the legislation because of the potential cost of compliance. But there is significant evidence that in fact, sensible health and safety precautions will actually save money.

According to the Business Roundtable, implementation of a comprehensive health and safety program at Air Products and Chemicals Incorporated reduced workplace injuries by more than 50 percent over 5 years, resulting in savings of \$1.7 million.

At John Deere, a comprehensive safety and health program reduced injuries and saved workers' compensation costs of \$32 million in a single year.

Over a 4-year period, Mobile Chemical Company brought all of its plants into OSHA's voluntary protection program, and savings amounted to more than \$1.6 million.

Many companies already have voluntary safety and health programs. Under the pending legislation, they will have to make minor or no changes, resulting in little or no extra cost. Clearly, the savings from safety and health programs to companies can be significant. Any valid analysis of the cost of this legislation must include an analysis of such savings.

Finally, it is important for OSHA to cover public service workers. For too long, they have been left out, at a considerably high cost to the employees and the taxpayer.

Each year, according to the National Safety Council, 1,700 public sector workers are killed on the job, and almost half a million suffer disabling workplace injuries.

There is no justification for denying coverage, for example, to public safety and public health personnel. Many of them hold hazardous jobs that expose them to dangerous conditions without the protection that workers in comparable conditions in the private sector enjoy.

In the case of public sector workers, the State taxpayers pay for the cost of the injury and for workers' compensation. These workers pay three times. They miss work and wages because of avoidable injuries and illness. As taxpayers, they absorb the cost of workmen's compensation and the hiring of replacement workers. And these increased costs drive down their ability to obtain higher wages and better benefits.

Many of these issues will be debated by our witnesses today, and I welcome them to the committee and look forward to their testimony.

Our first panel today features three witnesses who, while committed to safety and health in the workplace, take quite a different perspective from our proposed legislation on how to achieve the aims of a safe and healthy workplace for all workers in the United States.

Representative Harris Fawell joins us from the House, where he sits on the Education and Labor Committee. He has introduced legislation in the House which takes a different approach from the legislation we are considering today. Excuse me, Representative Fawell, for mispronouncing your name.



Mr. Eamonn McGeady joins us from Baltimore, where he owns a marine construction company that operates in Delaware, Maryland and Virginia. He is representing the National Federation of Independent Business.

Mr. Holt, of the Employment Policy Foundation, has testified previously before our committee concerning similar legislation we introduced in the 102nd Congress. He is accompanied by Alan Simon, an economist from the Foundation.

Congressman, we are glad to have you join us. I do not know why, but Reverend Falwell is on my mind sometimes, since I went to visit him down in Virginia a number of years ago. I apologize to you, but am delighted to welcome you here before the committee.

We appreciate the presence here today of our first panel. We had to reschedule them from a previously scheduled hearing, and we apologize for the inconvenience. We ran into unavoidable conflicts last time in terms of Senate floor action, so we appreciate your coming today.

Congressman, we appreciate your taking the time to be here today. We know you have spent a good deal of time thinking about this issue, and we look forward to your testimony.

**STATEMENTS OF HON. HARRIS W. FAWELL, REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS; EAMONN MCGEADY, PRESIDENT, MARTIN G. IMBACH, INC., BALTIMORE, MD, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS; AND JAMES HOLT, SENIOR ECONOMIC AND VICE PRESIDENT FOR RESEARCH, EMPLOYMENT POLICY FOUNDATION, WASHINGTON, DC, ACCOMPANIED BY ALAN E. SIMON, ECONOMIST**

Mr. FAWELL. Thank you, Mr. Chairman. I might add that I have received mail addressed to the Reverend Falwell that is delivered to my office from time to time, so you are not alone.

Mr. Chairman, I appreciate the invitation to testify before you today on the issue of OSHA reform and to present testimony in behalf of the bill which I and 16 of my colleagues have sponsored in the House, which is H.R. 2937.

I also want to thank Senator Kassebaum and Senator Hatch for introducing similar legislation last week in S. 1950.

Our bill takes a very different approach to OSHA reform from the legislation introduced by Chairman Ford in the House and by yourself, Mr. Chairman, in the Senate. But I do want to emphasize that I, as much as I am sure all of the members of the committee, want safe jobs and safe workplaces for our Nation's workers. Our disagreements and differences are about means, certainly not ends; about approaches and not goals.

I think that few people are satisfied with OSHA's performance over the last 23 years. But it is important to point to the improvements made in workplace safety and health during those same years. The occupational fatality rate is now at the lowest point ever. The rate of serious injury caused by workplace accidents was also at its lowest point for the lowest reported year, which was 1992, since those statistics have been kept by the Department of Labor. And while issues of safety and health obviously remain, and I am not recommending in any way that we can simply give up on

further reductions in workplace death and injuries, we need to enter into reform with a clear picture of what the current situation is, and that picture is, overall, a safer workplace and more attention being paid to safety and health than in any time in recent history, for which I am sure we are all thankful.

But we also need to ask the same question for OSHA's programs that private companies have had to ask of each of their programs and activities, and which increasingly Government is being asked as well. That is, what is the value added by these programs to achieving the goal of fewer injuries and accidents, and how can we achieve greater value from the program.

Interestingly, when that question was asked by Vice President Gore's task force designed to "reinvent Government," they concluded, as have we, that what is needed is not more mandates and regulations from Washington on employers, or heavier penalties by which OSHA inspectors can threaten employers, but incentive for workplace safety and health compliance and the use of market mechanisms to improve safety and health in the workplace.

None of us is so naive as to think that all employers do everything right, but I think we also ought not to fall victim to thinking that all employers do everything wrong "but for" the strong arm of Government to constrain them. Certainly, there is the need for enforcement measures, but Congress too often, I think, legislates as though the worst employers were in fact typical employers. The bill introduce, Mr. Chairman, by yourself and Chairman Ford, in my view goes too far in that direction.

It also, I think, exacerbates many of the problems which have plagued the OSHA program. OSHA has often and accurately been criticized for focusing Government enforcement on paperwork and nitpicking violations, rather than finding real safety problems. But the Kennedy/Ford approach is built, it seems to me, on new paperwork regulations for employers to comply with and for OSHA in turn to cite.

Relations between OSHA and employers are often unnecessarily adversarial, considering that employee safety should be in the interest of both as well as, obviously, the employees. But the Kennedy/Ford bill, I believe, expands the possibility of civil and criminal violations by employers as well as their officers and management officials, and even their supervisors.

OSHA has had difficulty in issuing standards in a timely and reasonable manner, but the Kennedy/Ford bill, I believe, would create even more stringent legal tests, denying cost-benefit analysis even where it is now currently permitted, and forcing OSHA, in my view, to write standards that are even more likely to be fought with every resource available by the affected industries.

In contrast to this approach, our bill contains no new mandates on employers, nor do we point a "holster-full" of new penalty provisions at employers. Our bill attempts to reorient OSHA's compliance philosophy from one of confrontation—a philosophy which measures success by the number and amount of penalties levied, and not by results—to one which will help employers comply with the law and one which will provide incentives to employers to undertake meaningful steps to improve workplace protection.

I would like to highlight just three parts of our bill—which of course, is a very arcane one, as is the entire act—because I think they are key to our approach to OSHA reform.

First of all, Section 7, Workplace-Based Incentives. It was perhaps only a stroke of fortune that shortly after we introduced our legislation last August, Vice President Gore's Task Force on Reinventing Government came to a recommendation similar both in spirit and detail to the one that we had included in H.R. 2937—to provide incentives encouraging employers to voluntarily utilize outside or inside expertise in a formal way to educate and certify compliance with safety and health rules.

But I think that it was not due to fortune, but really to independent efforts of each of us taking a serious look at OSHA's mission and resources and then asking how, by emphasizing new concepts, we can better utilize the OSHA program to be an integral part of the overall picture of improving workplace safety and health.

The Gore report, of course, urged the Department of Labor to undertake a program to provide market incentives through regulation. Mr. Gore aptly stated that "No army of OSHA inspectors need descend upon corporate America." He called for OSHA, and I quote again, "to establish a sliding scale of incentives designed to encourage workplaces to comply," adding that worksites with good health, safety, and compliance records would be allowed to report less frequently to the Labor Department, to undergo fewer audits, and to submit less paperwork. The need to do so through legislation has become evident since that report was issued.

Our bill provides that an employer who voluntarily utilizes the services of a third party consultation program—and those would be expanded beyond the current 46 programs that are funded by Federal grants—would be so certified and thereby be exempt from radon inspections by OSHA. Inspections triggered by employee complaints or accidents would continue to be conducted.

In addition, an employer who had a good internal safety program, and could demonstrate that its injury record is below the industry average, would also be exempt from random inspections. In addition, we would give employers partial reductions in penalties if they meet either of the same two criteria.

I am not going to claim that we have necessarily structured the incentives in our bill in precisely the best way, and we would be more than happy to be a part of a discussion about how best to structure incentives in the OSHA program. I think that it is important, however, that the incentive program 1) be widely available to employers and 2) place emphasis not on compliance with detailed program regulations, but on the bottom line, which is improved safety and health.

In that regard, let me say that others have suggested working to expand the current voluntary protection program is the way to go, and certainly, that program is a valuable part of the OSHA program, and I would certainly be happy with anyone with ideas on this subject. But I would be concerned by any tradeoff that allows incentives under the VPP only for 100 or so companies that can administratively qualify for incentives, while imposing even more mandates on everyone else.

The second point I would stress is changing OSHA's undue reliance on penalties and encouraging greater cooperativeness. Along with providing incentives for employers to undertake steps to improve safety and health, I believe that the OSHA program would be improved by a greater balance between enforcement on the one hand, and education, training, and other types of outreach activities. If, as commonly stated, "safety pays" for both employers and employees, then working with employers and employees to improve safety and health, rather than simply penalizing employers for noncompliance with detailed Government regulations, should be an effective way to improve job safety. And in fact, State OSHA programs which have made education, training and outreach an integral part of their programs have found this to be the case.

I am pleased that the Kennedy/Ford bill also recognizes that more assistance should be provided for training and education. I think that is the emphasis that we always must stress.

Unfortunately, it does not offer this assistance instead of its massive new, one way for all, safety and health and employee committee mandates on all employers, but in addition to them. I also question the way in which that assistance is funded in the House bill, that is, through higher civil penalties that are collected. Funding the program, even this part of it, through enforcement, or greater penalties that are collected, will simply, I think, add to the current perception among many, many employers that OSHA enforcement is largely motivated and driven by the Federal Government's insatiable appetite for more revenues.

Finally, I would add that the way not to achieve a more cooperative atmosphere is to increase penalties in the OSHA program, especially criminal penalties, as does the Kennedy/Ford bill, probably, from my viewpoint at least as an attorney, to the extent that OSHA inspectors would have to issue Miranda warnings in many cases, because of the more stringent criminal penalties that are involved, and maybe search warrants before an employer could even feel that he could cooperate. Well, that is not, I think, an atmosphere that any of us really want.

Finally, a third point is in regard to standards. OSHA's failure to issue safety and health standards is often cited, and rightly so, as a prime example of its failure to carry out the intentions of the Occupational Safety and Health Act. I must say that I agree to some extent—in fact, I fully agree—with that type of criticism. Thirty-three standards in over 20 years is not a very good record. But the problem is not just that few standards are issued, but that those which are issued have to meet extremely stringent legal tests.

I would point out that when the Occupational Safety and Health Act was being written, according to sources, Republicans favored a proposal which included an independent standards-writing board, independent of the Department of Labor, with representatives of both management and labor. The idea was that people in affected industries could generally write standards which were more clear, more practicable, and more reasonable than Government bureaucrats could. I think that the logic of that idea still holds.

We have been troubled over the years with the perfect in standard-setting being the enemy of the good, and thus we have gotten 33 standards only being approved.

While we have not reintroduced the idea of an independent board, we have created the preference for negotiated rulemaking for the very same reason, that inviting in a formal way the involvement of people who will have to comply with the standard early in the process will help to write more reasonable standards. We will get good standards, certainly, by that mode.

We believe OSHA's standards can also be made more practicable and more reasonable, but to do so may require a change in statute to give the agency greater flexibility in regulating risks. I know that this is a contentious idea. I think that the current situation clearly results in, as one commentator said, "overregulation leading to underregulation." Once again, the perfect being the enemy of the good.

Finally, I want to mention the issue of public employer coverage in our bill. With regard to the important issue of congressional coverage, we have attempted to apply the OSH Act to Congress as closely as possible to the way in which it affects the private sector. I am a strong believer that if we do that, we will have much, much more acceptance and respect from the public in general, while of course, trying to avoid some of the sticky questions about separation of powers. I think we have done that, and I would be somewhat critical, Mr. Chairman, of your bill inasmuch as the congressional coverage deals only very weakly with the subject, it would seem to me.

Second, with regard to State and local governments, we have decided since the introduction of H.R. 2937, as I noted, Senator Kassebaum did as well, not to change the current law which allows States to adopt plans to cover State and local governments. Some people feel that this situation has not worked and that we need to mandate coverage of all State and local employers from the Federal level. I think we need to be very careful, however, about imposing any new, unfunded mandates on State and local governments. The argument that the current system is "not working" is made without any reflection on ways, if that is the case, to make it work better.

I note, for example, that current law allows the Federal Government to pay 90 percent of the startup costs for a State OSHA program. Perhaps we need to fund that kind of authorization or make it better known. But in any event, I believe it would be a mistake to put this mandate on top of all of the others which State and local governments are struggling under at the moment. There are certainly means by which public employees can be covered through the States, and that ought to be the way this matter remains by State application of the same. Some 23 States have seen fit to adopt, for instance, the OSHA program, but a number obviously have not.

Once again, I appreciate this opportunity to testify and present my views on what I consider to be a very important piece of legislation.

Thank you.

The CHAIRMAN. Thank you very much, Congressman. We very much appreciate your comments, and you have obviously given this

a good deal of thought. Of course, you realize that there are some 10,000 Americans killed on the job every year. The Federal Government spends only about \$300 million a year in terms of enforcement to try to make our workplaces safer, and we spend \$7 billion—24 times that amount—to try to improve our environment. We need to rethink our efforts in this important area. I know you feel that way, and we do as well, and we are going to try to see if we cannot improve the coverage, not through the expansion of bureaucracy, but trying to work out cooperative programs like we are seeing working today, with strong business support.

In the Wall Street Journal last week, there was an excellent article about how safety and health committees are working, with strong business support, and I will include that article in the record. So we want to try to ensure that workplaces in this country are as safe and secure as possible. We know that is your objective, too, and we very much appreciate your taking the time to be here with us today.

[The article referred to may be found in the files of the committee.]

The CHAIRMAN. I want to recognize my friend and colleague from Utah, who is turning 60 years old today and is spending his birthday here with us on this important issue.

Senator HATCH. I keep trying to keep up with the chairman.

The CHAIRMAN. I am just this much ahead. This race, he can win; I will let him win on that count. [Laughter.]

I have no questions. Senator Metzenbaum is unfortunately ill today, and is not able to be here. This is a cause that he has been a real leader on in the U.S. Senate, and he is a leader in this committee on that as well. We will include his statement in the record, and recognize Senator Kassebaum.

[The prepared statement of Senator Metzenbaum follows:]

#### PREPARED STATEMENT OF SENATOR METZENBAUM

Good morning. As the members of this committee well know, we have spent much of this Congress debating health care reform. We have had dozens of hearings, and written plenty of proposals. It's on our televisions, and in our newspapers, every day of the week.

In contrast, reforming our OSHA law doesn't get much attention. But on an average working day in America, 417 workers die in safety accidents or from occupational disease—that's one death every four minutes. And another 7,000 workers suffer disabling injuries. These are staggering numbers.

We all agree that the best way to cut health care costs is to prevent Americans from getting sick or injured in the first place. That's exactly what the OSHA reform bill would do—it would reduce job accidents and occupational illnesses, and save billions in medical costs and lost work time.

Last week, Senator Kassebaum introduced a Republican OSHA reform bill. I know she cares about workers in Kansas and across this country. But I have read the Republican bill, and I am very sad to say that it is not about protecting workers at all. It is about protecting employers. It is about protecting corporate profits, at the expense of workers. It is about protecting businesses that turn

their backs on unsafe conditions, in the name of corporate "flexibility".

Let me tell you what it does. The Republican bill protects employers from OSHA inspections, but it does nothing to protect 7 million public sector workers who have no OSHA coverage.

The Republican bill protects employers from fines and citations if they have applied for a variance—even if the variance application has no merit. But it does nothing to require employers to abate hazards in a timely fashion, even when workers are clearly at risk.

The Republican bill protects employers from regulations that safeguard workers to the extent feasible, but it does nothing to address the thousands of worker deaths and injuries caused by years of standard-setting delays.

The Republican bill protects employers' right to dominate or interfere with labor organizations—including safety and health committees—but does nothing to guarantee workers a meaningful voice on safety and health issues.

The Republican bill protects employers from having to keep records or disclose information, but does nothing to ensure that workers are informed about workplace hazards and properly trained to deal with them.

The Republican bill protects employers from citations where the employee is at fault, and requires OSHA to reduce penalties by 50 percent even when the employer is clearly at fault, but it does nothing to punish employers when they kill or maim workers with criminal intent.

In short, I cannot find a single provision in this bill that protects workers. This Republican alternative recalls the legacy of Ronald Reagan, who tried his best to gut the OSHA act for the benefit of his big business pals, workers be damned. It is an insult to hundreds of thousands of workers who have lost their lives on the job, and to the families who still mourn them. We can, and we must, do much better.

Senator KASSEBAUM. Just briefly, Mr. Chairman.

Congressman Fawell, my apologies for missing the first part of your comments. You have been a true innovator in health and safety issues. Senator Hatch and I are pleased to be cosponsors of your companion bill in the Senate because we both endorse the same emphasis that you spoke to and that you have wished to do with your legislation, and that is increase education, increase the cooperative spirit in reaching safety and health concerns, rather than promote an adversarial atmosphere of penalties and so forth.

You touched in your comments on the voluntary protection program and that you would not want to see that limited. Would you want to see it expanded? You said you thought it would be a shame to just keep it limited and feel that we were doing what needed to be done under current legislation and then expand penalties. Would it be a program that, from your observation, has been a success, and how could it be strengthened?

Mr. FAWELL. Yes, I think everyone endorses the voluntary protection program, and I think we would all like to see it expanded, but it has a basic limitation because it is a tremendous bill, where there is a great deal that must be done by the various employers

that might quality. And that is very, very important, and to the degree that we can increase that, we should certainly do so.

On the other hand, there are many other routes where voluntary compliance and cooperation can be the hallmark, and that is where I think that OSHA has fallen down in not emphasizing nonadversarial tactics and to concentrate on cooperation, true cooperation.

It does not seem to me that when you mandate one way for all plans that you move in that direction. We have only so many inspectors, some 1,100 only for the whole Nation, and to even ask them to try to oversee the new mandates would be an enormous responsibility.

But the movement, I am convinced, as is Vice President Gore in his "reinvention of Government" concepts to which I made reference, that that is the way to go. That is new, breakthrough ideas, new ideas and new concepts, where employers can be brought into the education and training process and given incentives and truly have committees and plans that dovetail to the uniqueness of each employer.

Senator KASSEBAUM. I certainly value the leadership that you have provided on this, and I know that Senator Hatch and I are looking forward to working with you and other members of the committee in seeing what we can put together to address this issue.

I believe this is the last hearing, isn't it, Mr. Chairman?

The CHAIRMAN. Yes.

Senator KASSEBAUM. So we will do all we can to be supportive of the Fawell initiative.

Mr. FAWELL. Well, I appreciate the bill that both you and Senator Hatch have put forward.

Senator KASSEBAUM. Senator Hatch has provided a lot of leadership in the last Congress and years before that, on OSHA issues, so I will defer in-depth questioning to him.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hatch.

Senator HATCH. I have worked very hard at this, but I have been very unsuccessful with Senator Metzenbaum—and with Senator Kennedy as well.

Let me just ask a couple questions. If you could look, say, 5 years down the road, under two scenarios—one, S. 575, the Kennedy-Metzenbaum bill, if that becomes law; and second, if your bill becomes law this year—what would you see as the differences in workplace safety and health under each scenario?

Mr. FAWELL. Well, as I indicated before, I think that, with all due respect to the chairman and Mr. Ford, their bill leans very heavily upon enforcement—mandated new safety and health plans, mandated new employee committees, and also an increase of emphasis upon both civil and criminal penalties and in addition, making the standard-setting even more stringent than it is now, eliminating cost-benefit analyses, for instance, making it fairly difficult for anybody in the enforcement process to question, after the rule-making process has ended, to be able to question a new standard, which would be very difficult upon the ordinary people out there.



So I tend to think that that type of, it seems to me, confrontational approach will not accomplish a great deal and will usurp a great deal of the time of the 1,100 people who are out there now, not being able to adequately do the job of really inspecting.

Therefore, I think that Vice President Gore's concept—and that is incorporated—our bill was filed before the Vice President enunciated his "reinventing Government" concept as it pertains to OSHA—but I fully endorse his view—that would free up, I think, your OSHA inspectors, who then could concentrate on the real bad actors and target where they are going.

There could be private entities that could come in, certified by OSHA, who could help in the consultation, in new concepts of safety and health plans—there are a lot of beautiful ones out there that are working—and employers would know that they would not be subject to random inspections and things of that sort. I think all of that is moving in the right direction—nonconfrontational, working on cooperativeness. I do not think you will get cooperativeness when you mandate on employers new and expensive, extremely expensive, one-way-for-all plans that will conceivably, supposedly, fit in every type of workplace in America. I do not think that is the way to go, and it will be much more expensive and less effective.

Senator HATCH. Just one other question. What impact, if any, do you believe the Kennedy-Metzenbaum-Congressman Ford bill would have on the ability of businesses and specifically, small American businesses, to create jobs and remain competitive in the world economy?

Mr. FAWELL. I would believe it would have to be negative, the cost of trying to meet one-way-for-all kinds of plans and employee committees, both of which are sound concepts, by the way; there is no question that every employer should have some kind of safety and health plan and should be doing everything possible to work with employee committees. Under the Electromation case, it is somewhat difficult to know what is or is not legal under these circumstances, and that has to be cleared up, but that is the way that one should go. But when it is mandated, and you have estimates that the two mandates in regard to safety and health plans and employee committees would cost approximately \$50 billion per year, that kind of expense upon business has to be a real detriment, and there are going to be people who just are not going to be able to survive under those types of conditions.

In the construction trades, I think it is an absolute disaster that all of the requirements in regard to the safety and health plans that would be required there—it would have to increase all construction, I think, significantly, and for the small entrepreneur to try to figure out the maze of requirements there would be very, very difficult it seems to me.

I have spent some of my life in the construction trades, and I have some deep empathy for people who would have to try to abide by those requirements.

Senator HATCH. Well, thank you. I just want to say to you that we appreciate the leadership that you have provided on this and so many other issues over there in the House. This is a tough issue. I think everybody wants to do what is right here—

Mr. FAWELL. Absolutely, absolutely.

Senator HATCH [continuing]. And we are approaching it from two different ways. And I have to say that I agree with you that if we go with the more stringent bill, we are going to cause a lot of dislocations in the economy, and there will be a lot less voluntary cooperation out there, which is, I think, the name of the game.

Business people do not want to see their employees hurt—they have got to restrain others, and they have got to do a lot of other things—nor do they want to face unnecessary criminal procedures. And they want to volunteer under the current system, or they would under your bill, but if you pass this bill, I think voluntary cooperation is going to be a thing of the past, and if that happens, then it seems to me safety of the workplace is going to go down and not up.

Mr. FAWELL. Yes. We have tried it the other way for 23 years, and our record is not good.

Senator HATCH. I agree.

Mr. FAWELL. I think at least we owe it to the people to make a strong effort and strong emphasis in that direction, in voluntary compliance and incentives and market mechanisms. This is new, breakthrough thinking by people such as the Vice President, and I laud him for it. I think it is something we ought to really try.

Senator HATCH. Thank you. We are very happy to have you here today.

Mr. FAWELL. THANK YOU.

[The prepared statement of Senator Hatch follows:]

#### PREPARED STATEMENT OF SENATOR HATCH

Thank you, Mr. Chairman. I am pleased to be here this morning at one of a series of hearings this committee has held on OSHA Reform legislation. As I have remarked on many occasions, worker health and safety is not a partisan issue; it is a goal to which all of us aspire.

There are major differences, however, on the means by which we can best achieve this goal.

I look forward to the testimony of witnesses this morning. It is my expectation that their testimony will highlight those differences in approach.

I also want to extend my welcome to Congressman Fawell of Illinois. He has worked long and hard on issues related to worker health and safety, and I look forward to hearing his views this morning.

Finally, Mr. Chairman, I would simply note that last week I joined Senator Kassebaum in introducing a common sense and workable bill to reform the current system. That bill parallels, in many respects, one recently introduced by Mr. Fawell in the House of Representatives. I hope it will contribute to the dialogue on the methods that can best get us to our shared goals of a safer work environment.

The CHAIRMAN. Congressman, I do not know whether you have had a chance to read the Wall Street Journal, which is not known as a flaming liberal newspaper, and it is not known to promote confrontation mandates in the Federal Government. In this March 16th article, it talks about "Business falling in love with workplace

safety teams." It says, "It is one regulation that small business is learning to love," and it continues, "Usually, small businesses squawk at the prospect of yet more rules to follow and paperwork to complete, but this time, the reception is favorable. The effect is particularly dramatic in small companies, because most large corporations already have safety programs and committees in operation." And then it reviews the decline in the cost of workmen's compensation in the State of Oregon, which requires committees. Associated Industries, which is made up of all the businesses in the State of Oregon, saved over \$1 billion in terms of workmen's compensation costs.

You know, it is interesting that around here, you have a lot of theories about different public policy issues, and we have one here where we have evidence that it is working. The tragedy is all the workers in those States that are not covered by these requirements. We want to be able to do that.

I appreciate your testimony. We will have a chance, obviously, to discuss and debate this in these hearings. You have given it much thought, and we are grateful to you for your presentation.

Senator Wellstone.

Senator WELLSTONE. Thank you, Mr. Chairman.

I will let the Congressman go. I did not get a chance to hear you, and I thank you for coming over.

I think we will hear from John Lennes, who is going to talk about the Minnesota experience, where we have had some of these joint committees, which have been hugely successful with, I must say, broad bipartisan support. So we will wait for that, and I think that will be an important part of the testimony.

Mr. FAWELL. If I may just add, there is no question that the employer-employee committees is the way to go. The question is in reference do we mandate one-way-for-all, for everybody in the Nation. Those State programs to which reference was made in the Wall Street Journal article, those programs are very flexible, and that is the way we ought to be going in terms of great flexibility, because we will then have an employee-employer program that dovetails with the unique management, total quality management, or centralized management—there are all kinds and types and shapes and sizes—of business entities in America. As long as we make sure that that is able to grow from the company out, that is the important thing, I think.

Senator WELLSTONE. Again, Mr. Chairman and Congressman, I do not feel comfortable in holding you, and I apologize for being late. But let me just say this: I do not know too many people who stand up and say they are opposed to flexibility. I am not opposed to flexibility. We just have to be careful about where we're flexible. I have seen a history in our country where many, many working people—and I think it is a huge environmental issue—where we have seen serious injury and death, exposure to carcinogenic substances, and all of the rest. And quite frankly—I think I have said this before—I think if it had been the sons and daughters of professionals or upper-income people in the United States of America, there would have been a hue and cry, and we would have done something about this a long time ago.

So I really believe this reform is long overdue, and I want flexibility, but I also want to see some real teeth to it; I want to see something that is enforced, and I want to see something that will make a huge difference. I think that is the direction we must go in, but that is a long discussion, and I do not want to hold you; I know there are other witnesses.

Thank you for coming.

The CHAIRMAN. Did I understand that you do support, though, safety committees with representatives of the employer and the employees?

Mr. FAWELL. Yes.

The CHAIRMAN. Do you support that in every plant in Illinois, for example?

Mr. FAWELL. Well, I support the concept. There is no question that those companies that are out in the forefront and really accomplishing something, total quality management, etc, everyone, indeed they utilize wisely—they bring employees into the total picture and work with them—

The CHAIRMAN. But you do not mind the legislation that requires employers to have those kinds of safety committees that involve the employer and the employees?

Mr. FAWELL. The important point is that we do not try to mandate all the particulars from Washington. The idea that they should have employee committees, no, I think that is the way to go. It is very, very important for a company to work in a total quality management basis with the employees. It is when you detail it and have all the requirements dictated out of Washington that it breaks down, I believe.

The CHAIRMAN. OK. Thank you very much.

Senator WELLSTONE. Thank you.

Mr. FAWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Next, Eamonn McGeady—I see you have survived St. Patrick's Day.

Mr. MCGEADY. I am still in a vertical position, Senator. [Laughter.]

The CHAIRMAN. Senator Mikulski wanted me to especially give you a warm welcome here.

Mr. Holt, we are delighted to have you as well.

Would you proceed?

Mr. MCGEADY. Thank you, Mr. Chairman.

My name is Eamonn McGeady, from Baltimore, and I and my brothers own and operate a heavy marine construction firm. I would like to request that the chair order the acceptance of previously-submitted written testimony on behalf of NFIB and my own personal statement.

The CHAIRMAN. They will be included in the record.

Mr. MCGEADY. Thank you, Mr. Chairman.

I listened with considerable interest to Representative Fawell's presentation here, because it seems to me he hit a number of the key points that concern us.

I guess the first of those is the "us versus them" concept that seems to flow throughout the chairman's bill and the companion bill in the House. And I do not think that that is really intended, but that is the ultimate result, particularly with what seems to us

the severe reliance on criminal penalties. The bill sort of indicates that maybe all of us are at least amoral, if not criminals, in doing what we are trying to do in our economy.

And I agree with Representative Fawell that it would probably engender something close to you cannot come here without a search warrant and Miranda rights and everything else.

For example—and I did not mean to do this, but I was just looking around—the question becomes even if a company has a good safety program—and we believe ours does; we have the lowest experience modification in the State of Maryland for our industry—even if there are required safety meetings, which we do have, and an employee does something, let us just say stupid, or in direct contravention to orders given to him, then criminal penalties could be assessed against one of the officers or owners.

The CHAIRMAN. Excuse me. The legislation we are talking about in this hearing is S. 575, which amends the Occupational Safety and Health Act. The only criminal penalty now under the OSH Act is for willful violations resulting in death. The change we are proposing in our bill with regard to criminal penalties would make criminal penalties also available for a willful violation that results in serious bodily injury. So let us talk about that. We want to let you make your presentation, but if you are going to characterize the legislation, I just want to make sure we are talking about the same bill.

Mr. MCGEADY. Well, I think we are, Senator, because OSHA takes—

The CHAIRMAN. Well, then, let us talk about that. Let us talk about what the bill actually does. If you want to talk about another piece of legislation, we are glad to hear you, and I am glad to put it out here, but I am not going to have the legislation which I have introduced just flagrantly and blatantly misinterpreted and misdescribed. The legislation I have introduced does not impose criminal penalties on employers except for willful violations where there is proof beyond reasonable doubt.

Mr. MCGEADY. I understand that, Senator. I am not trying to.

The CHAIRMAN. Well, then, do not.

Mr. MCGEADY. What I am saying to you is that OSHA treats the second violation as willful. Example: One of our employees cut his leg with a chainsaw about 2 years ago. Another employee—a different employee—had another accident with a chainsaw. OSHA takes the position that that would be a willful violation because it was the second occurrence. I do not think you intended that.

The CHAIRMAN. Excuse me?

Mr. MCGEADY. I do not think you intended that result to follow.

The CHAIRMAN. And I do not think that that is the correct assessment and interpretation of the law, either. I am going to let you talk, and I will—

Mr. MCGEADY. I hear where you are coming from, but that is what we see.

The CHAIRMAN. Well, you may see it, but you are not interpreting it correctly. Under the law, a second violation is not automatically a willful violation. But I will let you make your presentation and then respond.

Mr. MCGEADY. With respect further to the committee structure which was talked about, in Maryland, as your chart shows, we do not have the mandated committees, yet our company has operated for at least 30 years with those kinds of committees in place, and I think it has resulted in a good performance with respect to workplace safety. With respect to some of the statistics quoted earlier, I think it is easily demonstrable that currently, the worst part of working is driving to work; it is much more dangerous to drive to work than to be at work, from a statistical standpoint.

Going to the question of site control, which I do not think is addressed directly in your bill, but it one of the follow-on consequences that I am not sure is intended. As you may be aware, there are some recent court cases dealing with site control—s-i-t-e, of course, control—by a contractor who may not be the general contractor. There are some very great problems there, in my judgment, in the educational training mandates in the current bill. The reason is that even though we, as in our case, a heavy foundation contractor, are on the site as a subcontractor, we are still considered as being a site control contractor under the current OSHA regulations.

Another major area that we have a good bit of trouble with is the consultation aspects. I believe 46 States have some version of consultation, but the interesting thing is that it strictly on the State side; it does not apply to OSHA itself. It is only if a State has an approved—in Maryland, of course, it is referred to as “MOSHA.” We who are directly subject to OSHA cannot have consultations. An inspector coming onto one of our job sites cannot help us out. He or she must write a citation. They have no option.

An example, again, in some of the areas of overregulation, in our judgment, the crane standards that are being proposed, for example, currently have—and as far as I know, they have not been adopted—currently have a requirement of between 8,000 and 10,000 hours of training for a crane operator before that person can be called a full-fledged crane operator. Yet we are teaching young men and women to fly \$50 million jets on and off aircraft carriers in about 200 hours. So there is an imbalance in the regulatory aspect here that is fairly severe.

Some of the aspects of the penalties, of the inspections without consultation, and so forth, are very troubling to us. Example: I just took a quick look, and here in this hearing room, there are no ground fault interrupters on the cables that the cameramen are using. That is worth about \$10,000 in our industry.

I believe that if we are able to get some sort of improvement in the OSHA standards, in the OSHA performance, that will allow the marketplace to operate—I believe Mr. Fawell was on track when he said let it work, because it is too expensive not to be safety-conscious—if we are able to come up with amendments or a version of the bill that would allow us to have consultations, would allow us, even encourage us by incentives or otherwise, to have safety experts come in and help particularly small businesses to deal with the myriad of regulations, which literally are about 4½ inches high when stacked one on top of the other—those are the big problems that are troubling us.

I think the committee aspect needs a lot of work from the standpoint of not having it so rigid as is in the current bill. I think the criminal penalties are absolutely counterproductive. I find that the most egregious part of the bill. It is just making the bald-faced assumption that all employers are, as I said, either amoral or outright criminals, and I just do not think that is the case. There may be some very few, and those penalties need to be applied in that case—but not right out of the gate.

I think the written programs need a lot more flexibility. Clearly, what operates for a home builder in Minnesota does not apply to a heavy construction marine contractor in Maryland. There needs to be some flexibility in what those programs can be.

And the lack of consultation—OSHA itself says they just cannot consult; they must write a ticket. We think that is the wrong way to go.

I would be glad to answer any questions.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. McGeady and the NFIB follow:]

#### PREPARED STATEMENT OF EAMONN MCGEADY

Mr. Chairman, my name is Eamonn McGeady and I live in Baltimore, MD. Together with two of my brothers I own and manage Martin G. Imbach, Inc., a heavy and marine construction company that operates in Delaware, Maryland, and Virginia and is headquartered in Baltimore. We employ approximately 65 people and have been in business since 1944. I have been associated with the firm since 1963. Prior to that I served in the U.S. Army Corps of Engineers and worked as the principal safety manager in a Baltimore ship repair and building yard.

Our firm operates in what is generally considered a relatively dangerous environment—heavy construction, pile driving, bridge building, cable laying and other underwater work. Yet, we have managed to maintain one of the better safety records in our state for many years. We believe this record has been accomplished because our employees believe in safety procedures, because management has insisted on safe operating procedures, because our supervisors and employees have been trained in safety procedures and because we have had consultations, inspections and safety engineering visits from our insurance company representatives.

In short, if you will pardon the pun, safety is no accident. You will note that I have omitted OSHA from the recitation. That brings me to the first major difficulty that I have with S. 575, the "Comprehensive OSHA Reform Act".

Under the current operating rules, OSHA representatives cannot consult or advise us—if they come on our job sites they can only write citations. You must certainly understand that this engenders an "us versus them" mentality if we are visited. The OSHA consultation program, which is underfunded and should be expanded, brings people outside of OSHA to conduct consultations. Any reform legislation must make OSHA more of a consultative agency to help employers maintain safety programs. Currently, even the smallest error in safety can result in an expensive fine or many hours of letter writing, meetings, lawyers and management hours expended. This is so because in the present context OSHA has admitted that the penalty structure is designed not to improve safety but rather to raise revenue. How much more productive for all concerned would it be if the same visit was consultative in nature, with recommendations for improvement and follow up visits, if necessary, to determine that corrections had been made? The argument that fines are required to insure compliance is patently false, since the great majority of employers want to comply with safety regulations because it is far more economical to do so—from an operations standpoint, a human standpoint and from an insurance premium standpoint. Put bluntly, the marketplace demands a safe workplace. You cannot afford to do otherwise.

This brings me to my second major concern about S. 575—the imposition of criminal penalties on managers and officers of a company. I find this the most egregious aspect of the proposed reform legislation. Even if our firm were to insist on safe work procedures (which we do); even if we require safety training for our employees and supervisors (which we do); even if we have daily talks/meetings/safety discussions (which we do) and even if a specific directive given to an employee is violated and that employee is injured, under the proposed revisions to the law one of more

of our officers or supervisors could face criminal action. I find this mind set on the part of the drafters and/or the Department of Labor absolutely unacceptable. Their implication seems to be that the majority of employers are at best amoral and at worst rank criminals needing to be severely fined or jailed to force compliance with this myriad stack of regulations. I unequivocally reject that implication. There has to be a better way.

Further, the mandatory safety committees required by S. 575 would fly in the face of good operating practice. The strict imposition of the type and makeup of the committees would require many well-functioning groups currently in place in many workplace sites to be disbanded or restructured on illogical grounds. Again, the drafters seem to think that American employers are operating somewhere in the 18th century. Every business owner or corporation that I can think of has some form of a consultation/feedback structure with their employees on safety matters. To not do so would be foolish. I won't even comment on the probable conflict with many aspects of the NLRA as amended.

I also think that there will be serious objection to this rigidly structured approach by many small, medium or larger sized companies that are not unionized. This provision seems to be a "back door" approach to union organizing and will be clearly perceived as such. If the drafters are convinced that these committees are needed (I am not), there are better ways to accomplish their goal. For example, Senator Kassebaum's bill, S. 1950, which NIFB supports.

Finally, the bill's requirement for written safety and health programs to be in place for all employers is disingenuous at best and ludicrous at worst. Those employers who have the resources or the particular requirements for a specific safety program will develop their own or adapt industry standard type programs. Those who don't have those resources and do not have a written program will simply send \$9.50 to the GPO to get these books (referring to 29 CFR 29 1910-1926 et seq.), attach a letter to all employees and say "this is our safety program." It will meet the letter of the law but I question whether it accomplishes anything. I believe other incentives to cooperation between employer/employees and the regulatory bodies will be far more effective.

In summary, Mr. Chairman, there certainly are many aspects of the Occupational Safety and Health Act that need fixing in the light of modern management-labor relations. The streamlining of the Act is an absolute necessity in the current atmosphere of intentional competition. The chokehold on American business and industry by archaic, outdated, outmoded and frequently illogical regulations must be addressed. If the Vice President's reinventing government group has identified many areas needing drastic improvement, I suggest that Congress and industry, working together, can do substantially more. The only question is whether we have the political will to do so. S. 575 is not a good beginning. The most dangerous part of having a job today is driving to work. Even one fatality or serious injury on the job is one too many. We have steadily reduced the dangers of the workplace over the years and must continue to do better. This heavy-handed whip is not the way. The carrot has been demonstrated to be far more effective and therefore, I urge the committee to support Senator Kassebaum's bill, S. 1950. Thank you.

#### PREPARED STATEMENT OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

The National Federation of Independent Business (NFIB) is a voluntary membership organization made up of more than 600,000 small and independent business owners nationwide. Our membership parallels the national business population in that approximately 50 percent of our members own retail and service enterprises; 25 percent are in the manufacturing and construction business; and the remaining 25 percent operate agricultural, transportation, mining, wholesale, financial, insurance or real estate enterprises. The typical NFIB member employs live workers and reports gross sales of around \$250,000 per year.

Being a small business person today is rough. Every day a small business owner faces major business challenges to keep his or her business going—life and death decisions for that business.

Workplace safety, however, is a primary concern for most small business owners because they care about the people who work for them and because they can't afford to have their employees hurt.

Keeping up with existing OSHA workplace laws is a struggle. Most small business owners do their best to comply with them now, even though it's very time consuming to ensure safety in their workplace.

In spite of the excellent safety record of most small businesses, this bill says they're doing it all wrong and not providing safety in the right way.



## CRIMINAL PENALTY EXPANSION

S. 575 increases the employer penalty for a willful violation against an employer resulting in an employee's death from six months in jail to ten years. It also creates a new criminal penalty of up to five years in prison for a first offense in which a willful violation results in the "serious bodily injury" of a worker.

The atmosphere of intimidation and fear which existed in the 1970's between OSHA and business owners will return if criminal penalties are expanded to include this injury provision. Throughout the 1970's NFIB testified before this Committee about small firms' distrust of OSHA. OSHA standards were not, by and large, perceived as being appropriate or effective in improving workplace safety. Nor was enforcement seen as reasonable or fair.

For a decade we received letters and calls from members who maintained accident-free businesses for ten, twenty, even thirty years who deeply resented the heavy-handed tactics of OSHA inspectors and their explicit assumption of employer negligence, refusal to take into account good safety records, eagerness to cite each and every nit-picking defect, and ignorance regarding particulars of the business.

In 1980, NFIB testified before this Committee, that, "Despite all efforts, OSHA has been unable to produce a clear record of any impact on workplace safety and health. On the other hand, OSHA's impact on public opinion is significant, as it has become the symbol of excessive, unwarranted, ineffective, and costly regulation."

Congress believed it necessary to cast OSHA as the policeman over the business community. The result was disastrous. OSHA did more to destroy the public's faith and trust in government than any other single federal agency. The reason for this was clear: OSHA treated employers like criminals. It is not an exaggeration to state that throughout the 1970's OSHA created mass confusion and outright fear among small businesses.

Increasingly in the last 13 years, the relationship between OSHA and business owners has vastly improved. Currently, over 99 percent of OSHA cases become final without contest or are settled between OSHA and the business owner prior to a hearing. If S. 575 passes with the inclusion of expanded criminal sanctions, the cooperative spirit between OSHA and small business owners will be quickly replaced with the adversarial relationship which existed in the 1970's.

Job-site safety will suffer as a result because small firms will be more likely to contest violations. Prompt abatement of hazards and fast settlements of citations after an accident will be replaced with long abatement periods during which time dangerous working conditions may not be corrected. Because a criminal prosecution may result, business owners will, as former Assistant Secretary of Occupational Safety and Health, Gerald Scannell, testified on criminal penalty legislation in 1990, "invariably invoke their Fifth Amendment privilege against selfincrimination, and will seek to delay the civil proceedings during the pending criminal case."

Small business owners will also be much more likely to require OSHA inspectors to obtain search warrants for inspections of accident reports. Currently, most small business owners consent to inspections without search warrants.

Further, the criminal penalty provision in S. 575 is unnecessarily vague and will create a further legal impasse, hampering the ability of OSHA and small businesses to work together for greater workplace safety. Terms such as "serious bodily injury" and "willful violation" are defined in a variety of different ways in current case law. They are particularly unclear from the standpoint of a small business owner. The vast majority of small businesses are not attorneys nor do they have an attorney on staff to decipher terms over which the courts cannot even agree.

S. 575 defines "serious bodily injury" as "a substantial risk of death, protracted unconsciousness, protracted and obvious physical disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." Though this term has been defined in previous federal criminal law, the definitions are by no means uniform. Further, it is certainly a completely new term to the OSHA Act and an entirely new term for small business owners who will be in constant fear about whether they will be accused of a criminal violation.

The term "willful" in the context of a safety violation is equally unclear and open-ended. In the past, court cases have defined "willful violation" in numerous ways. In *Ensign-Bickford Co. v. Occupational Safety and Health Review Commission*, (1983), for instance, the court defined "willful violation" as plain indifference toward safety requirements of the general duty clause. The court found that no further showing is required to establish willfulness, and the employer need not harbor malicious motives or possess specific intent in order to commit a willful violation.

With unclear legislative direction under S. 575, the question remains as to whether it will be necessary for a small business owner to hire a criminal defense attorney each time an accident occurs or an OSHA inspector shows up at his or her door.

Again, increased criminal penalties for willful violations causing serious bodily injury will not increase safety on the workplace but only tangle the safety debate in a legal quagmire and subject small business owners to fear and mistrust of OSHA.

#### WRITTEN SAFETY PROGRAMS

The requirements of Title I of S. 575 will overburden small business. Even the smallest businesses will be forced to spend huge amounts of the owner's time and money to prepare the detailed written safety plan the Act requires. Written programs must include procedures for health hazards, investigating work-related injuries and providing safety and health identifying services. Plans will also require small employers to develop methods for responding to the recommendations of safety committees. And, these requirements are only the tip of the iceberg.

This overly detailed safety plan will probably be filed away and forgotten by employees who won't want or be able to absorb the intricacies of such a plan. Safety will suffer as a result. In addition, the paperwork burden of written safety plans required by this bill will be enormous. In a recent NFIB survey, small business owners cited government regulations in the top ten concerns out of 75 problems. They don't need any more!

Very often direct action, and as few extraneous words as possible, work much better on the shop floor. Warning signs on all hazardous equipment, a short video and periodic warnings to workers may be something they remember more than 20 pages of specifics.

Furthermore, under this legislation, plans will be plagiarized, copied from one company to another. Plans may meet OSHA requirements but not provide the safest working environment needed for a particular small business.

In addition, to follow the overly technical requirements of this bill will take large amounts of time, the time of a small business owner, since most small companies are not large enough to delegate this job. This takes small business owners away from the daily business decisions crucial to keeping the business running and people employed.

#### MANDATORY SAFETY COMMITTEES

Title II of the legislation mandating joint safety committees tries to duplicate policies many small employers have already implemented. The difference is that this bill is inflexible and does not allow any variation of safety committees or safety procedures that are not approved by the Secretary of Labor. In addition, the safety committee provision will be costly to small business owners and could result in their being taken advantage of by a disgruntled employee or open the firm up for potential unionization, pitting business owners against their employees.

Title II requires that a small business owner with two or more employees pay them for the time it takes for the safety committee to conduct interviews, establish procedures, review records and accompany OSHA inspectors. This increase in the scope of their duties will double or triple the time they spend, at the expense of production. Small business owners struggle every way they can to keep their indirect labor costs down. This bill would cause those costs to increase substantially and lessen their ability to hire more people as they try to grow.

Most small business owners want to work directly with their employees to solve potential problems. Congress can't mandate cooperation between management and labor but this bill attempts to do just that in a clumsy, unworkable manner. This law subtly promotes a destructive US versus THEM attitude. Both sides will end up resenting the situation in small businesses.

The government wants business owners to give up their control to a committee of people who don't have nearly as deep an interest in the safety of employees and success of the business as the small business owner does. Small business owners find that offensive.

#### CONCLUSION

What small business owners need three days from government is cooperation and guidance. They need a partnership and help, not onerous new burdens such as those imposed by S. 575 that add nothing to workplace safety. Most business owners want to do the right thing. Senators should help them to maintain safe workplaces, not make their lives more difficult with new rules that drive them out of business and take away jobs from their employees.

The CHAIRMAN. Mr. Holt.

Mr. HOLT. Thank you, Mr. Chairman and members of the committee. We appreciate your affording the Employment Policy Foundation this opportunity to appear before the committee to discuss the private and public sector employer costs of S. 575.

As you know, the Foundation first studied this issue in 1991-92 when COSHRA was before the 102nd Congress. The foundation recently updated and revised its cost estimates to reflect the new and changed provisions in S. 575, and we would respectfully request that the revised study entitled, "COSHRA Legislation in the 103rd Congress: An Update of Estimated Private and Public Sector Employer Costs" be included in the record of this hearing.

Based on the Foundation's revised and updated estimates, the annual recurring costs to private and public sector employers of the provisions of COSHRA for which we were able to estimate costs, and the agency administrative costs, would be \$61.87 billion.

The components of this total are as follows: For safety and health programs, \$21.3 billion; for safety and health training, \$6.3 billion; for safety and health committees, \$11.01 billion; recordkeeping and reporting requirements, \$3.6 billion; monetary penalties, \$.09 billion; litigation costs, \$8.55 billion; the construction safety and health and provisions, \$6.4 billion; public sector employer costs, \$4.1 billion; and OSHA administrative costs, \$.47 billion, for a total of \$61.87 billion.

Now, \$61.87 billion represents, to put it in perspective about 2.9 percent of total nongovernment payrolls in 1990, or about 11.8 percent of business net income in 1990. Imposing costs of this magnitude on private and public sector employers will have significant adverse impacts. Their effect will be to increase prices, lower real wages, and reduce overall employment and productivity.

Since the Foundation first made public its estimates of the private sector employer costs of COSHRA, these estimates have been described by some proponents of COSHRA as "wildly exaggerated." I would like to briefly describe for you how we reached our estimates, so that you can draw your own conclusions about whether they are exaggerated or realistic.

COSHRA, as you know, requires each employer to establish and carry out a safety and health program. Based on discussions with industry safety and health experts, we estimated that administration of safety and health programs would require an average of 2 weeks per year by a middle manager per firm. An additional cost of \$1,000 per establishment was estimated to provide safety and health services, including the emergency response and first aid required in the bill. If these costs are incurred by the 6.1 million non-agricultural reporting units reported by the Bureau of Labor Statistics and the .82 million farms employing labor, the annual cost of maintaining and carrying out safety and health programs would be \$21.3 billion.

COSHRA requires all employers to provide safety and health training—to new employees when hired; to members of safety and health committees when they are selected; and to all employees and committee members on an annual refresher basis. Additional specialized training is required for safety and health committee members, and information must also be provided to other employers' employees at common work sites.

An average of 4 hours of initial training was estimated to be required for new employees, and the annual refresher training was estimated to require 2 hours per employee. Based on our discussions with industry experts, members of committees would require an average of about 16 additional hours, or 2 days of training annually. Training provided to contract employees was estimated at one-half the level provided to regular employees.

Based on these cost parameters, the annual cost for training 93.2 million employees of 6.92 million private sector employers would be \$6.3 billion.

COSHRRA requires each employer of 11 or more employees to establish a safety and health committee at each worksite. The specific mandates of these committees are spelled out in detail. We estimated that both employer and employee representatives of committees would spend an average of 5 percent of their working time on committee activities. COSHRRA spells out the required number of employee committee representatives based on establishment size. We assumed there would be an equal number of employer representatives on these committees. Based on these proposed requirements 1.69 million committees would be required to be formed, with 2.15 million employee members on these committees and an equal number of employer members. The annual compensation cost for these committees is estimated at \$11.01 billion.

COSHRRA also extends OSHA and the new requirements of COSHRRA to all State and local government employees. The same cost parameters for programs, training and committees used in estimating private sector employer costs were used to estimate the cost to governmental employing units, except that no penalties and no litigation costs were assumed. The cost to extend COSHRRA to the 200,000 governmental employing units and their 17.9 million employees was estimated at \$4.2 billion. COSHRRA includes no funding to offset these federally-mandated costs that will be imposed on State and local governments.

Unfortunately, time does not permit me to describe the other components of the cost estimate, but I would like to point out that only the most prescriptive elements of COSHRRA are included in our Employment Policy Foundation cost estimate. COSHRRA includes many other provisions, as you know, and these would entail significant employer compliance costs which cannot be estimated at this time.

Would benefits offset these costs? The question here is the extent to which the provisions mandated by COSHRRA, particularly the administrative and paperwork provisions included in the Foundation's cost estimate, will reduce occupational injury and illness rates, and to what extent such reductions may offset employers' costs of compliance with COSHRRA.

The most direct measure of the monetary costs to employers of occupational injuries and illness and potential monetary benefits from reduction in injury and illness rates is the annual workers' compensation premium cost. For 1988, which is the latest year for which data was available when we actually undertook our original study, these premiums totalled about \$43 billion annually. They are significantly higher now, of course. The workers' compensation system does not appear to be very responsive to changes in illness

and injury rates. Premiums have risen dramatically in recent years, far out of proportion to changes in injury and illness rates, which have actually declined. A major reason for this, of course, is increases in medical costs and increases in wage levels, and therefore in compensation payments, which are the two principal components of workers' compensation costs.

However, assuming a net improvement of 10 percent in occupational safety and health due solely to the provisions of COSHRA, and assuming a proportionate reduction in workers' compensation premiums, both of which would be dramatic declines by historical standards, this would result in a savings to employers in workers' compensation premiums of only \$4.3 billion based on the 1988 premium levels. And these savings would take years to materialize.

The consensus of experts interviewed for this study was that the benefits of COSHRA would be modest at best, and that offsetting monetary benefits to employers, if any, would be limited to a modest reduction in insurance costs.

Thank you for the opportunity to present the Foundation's analysis of COSHRA employer compliance costs. I will be pleased to try to respond to any questions you may have.

[The prepared statement of Mr. Holt follows:]

#### PREPARED STATEMENT OF JAMES S. HOLT

Mr. Chairman and members of the committee, thank you for affording the Employment Policy Foundation this opportunity to appear before the Committee to discuss the private and public sector employer costs of S. 575, the "Comprehensive Occupational Safety and Health Reform Act" (COSHRA)

My name is James S. Holt; I am senior economist and vice president for research of the Employment Policy Foundation. With me is Alan E. Simon, an economist with the foundation, who assisted in the updating and revision of our study.

The Employment Policy Foundation is an educational foundation established in 1983 to assist policy makers and the public in understanding the implications of employment policies being formulated by Congress and other legislative bodies, government agencies and the courts. The Foundation is concerned that the costs of proposed employment legislation and the potentially adverse impacts of these costs on competitiveness, job retention and job creation, are often overlooked in the consideration of such legislation. Accordingly, the Foundation undertook this study to identify, analyze and, where feasible, estimate, the costs of COSHRA.

EPF first studied this issue in 1991-92, when S. 1622 was before the 102nd Congress. After S. 575 was introduced in the 103rd Congress, EPF updated and revised its cost estimates to reflect the new and changed provisions in S. 575. We also revised our estimates to utilize more recent data than was previously available. In addition, we included in the revised study estimates of the public sector employer and agency costs. The revised study, "COSHRA Legislation in the 103rd Congress: An Update of Estimated Private and Public Sector Employer Costs" was issued in September, 1993. We respectfully request that the study be included in the record of this hearing.

Based on the Foundation's revised and updated estimates, the annually recurring costs to private and public sector employers of the provisions of COSHRA for which costs were estimated, and the agency administrative costs, would be \$61.87 billion annually. The components of this total are as follows:

Safety and Health Programs	\$21.31 billion
Safety and Health Training	\$6.34 billion
Safety and Health Committees	\$11.01 billion
Recordkeeping and Reporting	\$3.60 billion
Monetary Penalties	\$0.09 billion
Litigation	\$8.55 billion
Construction S&H Provisions	\$6.40 billion
Public Sector Employer Cost	\$4.10 billion
OSHA Administrative Cost	\$0.47 billion
<b>Total Cost</b>	<b>\$61.87 billion</b>

To give these cost estimates some perspective, \$61.87 billion represents 2.9 percent of total non-government payrolls in 1990 or 11.8 percent of business net income in 1990.

Imposing costs of this magnitude on private and public sector employers will have adverse impacts on other economic variables. Their effect will be to increase prices, lower real wages, and reduce overall employment and productivity. Employers may choose to absorb some of these costs within current staffing levels rather than hiring additional management, professional and production personnel. However this response would have the same effect—resources absorbed by COSHRA-required activities would be resources not available for other management and production activities, which would reduce productivity and efficiency of the enterprise.

Since the Foundation first made public its estimates of the private sector employer costs of COSHRA, these estimates have been described by some proponents of COSHRA as "wildly exaggerated". In fact, we feel our estimates are very conservative. Furthermore, they include only a portion of the COSHRA requirements—principally the administrative and paperwork requirements. I would like to briefly describe how we reached our estimates so that you can draw your own conclusions about whether they are, in fact, exaggerated or realistic.

First, a word about how the study was conducted. We developed our baseline estimates of costs after conducting a series of intensive interviews with industry safety and health experts, supplemented by information from secondary sources. This information was used to estimate average costs per covered firm or employee for the selected provisions of COSHRA. The estimates were then expanded to the estimated universe of employers and employees covered by COSHRA based on Bureau of Labor Statistics (BLS) and U.S. Department of Commerce data described more fully in our report.

#### 1. SAFETY AND HEALTH PROGRAMS

COSHRA requires "each employer" to "establish and carry out" a Safety and Health Program. A major part of "carrying out" the Safety and Health Program is accounted for by training and education and the activities of the Safety and Health Committees where such committees are required. We estimated the cost of these activities separately. This leaves the development and maintenance of the written Safety and Health Program, the provision of safety and health services, including emergency response and first aid, and other activities related to the administration of the Program (including employee involvement where committees are not required) to be accounted for here.

Based on discussions with industry safety and health experts, we estimated that administration of safety and health programs would require an average of two weeks per year by a middle manager. For large employers, the time required would be considerably more; some experts made estimates in the range of one-quarter person year to a full person-year per facility. Because of the large number of small employers in the universe, an average of two weeks seemed reasonable and conservative.

There was also a wide variation in the estimates of industry experts for the cost of the provision of safety and health services, including emergency response and first aid. A major problem in estimating the cost of this provision is that the proposal is vague on what would be required. One would have to await the issuance of regulations to make an accurate estimate. Nevertheless, assuming some sort of on-site capability, which in all but the smallest establishments may include a dedicated physical space, equipment, supplies, and professional health personnel or training for other staff in first aid procedures, an additional cost of \$1,000 per establishment was estimated for this requirement.

If the above costs were incurred by the 6.1 million nonagricultural "reporting units" reported by BLS and the 0.82 million farms employing labor, the annual cost of maintaining and carrying out Safety and Health Programs would be \$21.31 billion.

#### 2. SAFETY AND HEALTH TRAINING

COSHRA requires all employers to provide safety and health training to (1) all new employees when hired, (2) members of Safety and Health Committees when selected, and (3) all employees and committee members on an annual refresher basis. The training requirement is very comprehensive. Training must be provided in a manner readily understood by employees, and cover safety and health hazards, control measures, the employer's Safety and Health Program, employee rights, and applicable laws and regulations. Additional training for Safety and Health Committee members must cover methods and procedures for hazard recognition and control, the

conduct of safety and health inspections, the rights of the Safety and Health Committee, and other aspects of Committee activities. Employees must be paid for the time spent in training. "Information" must also be provided to other employers' employees at common work sites.

It was estimated that, on average, four hours of initial training would be required for new employees, and that annual refresher training would require two hours per employee annually. Based on our discussions with industry experts, members of committees were estimated to require, on average, 16 additional hours (2 days) of training annually. Training provided to contract employees was estimated at one half the level provided to regular employees. A new hire rate of 2 percent per month was assumed. Discussions with industry safety and health experts and a review of OSHA regulatory impact analyses indicated that instructional costs (for instructors, materials, equipment, and facilities) would be approximately 20 percent of the direct employee compensation cost.

Based on these parameters, the annual compensation cost for training 93.2 million employees of 6.92 million private sector employers would be \$6.34 billion.

### 3. SAFETY AND HEALTH COMMITTEES

COSHRRA requires each employer of 11 or more employees to establish a Safety and Health Committee at each worksite. The committees are given a broad array of responsibilities. These include, but are not limited to, reviewing the employer's safety and health program, reviewing incidents involving work-related fatalities, injuries and illnesses and employee complaints, conducting worksite inspections and employee interviews, and conducting meetings, complete with written minutes.

We estimated that both employer and employee representatives of committees would spend an average of 5 percent of their working time on committee activities. Managerial and administrative time required to conduct elections of employee representatives, select employer representatives, respond to committee recommendations, and attend to other committee related business was estimated to require, on average, one week of a middle manager's time annually. Clerical support for committees, including maintaining minutes and records, was estimated to require an average of one week of clerical time annually.

COSHRRA spells out the required number of employee committee representatives based on establishment size. We assumed there would be an equal number of management members on committees. Based on these proposed requirements, 1.69 million committees would be required to be formed, with 2.15 million employee members and an equal number of employer members. The annual cost for committees, based on the parameters spelled out above, is estimated at \$11.01 billion.

### 4. PUBLIC SECTOR EMPLOYER COSTS

COSHRRA extends OSHA coverage, including the new requirements of COSHRRA, to all state and local government employees. Even where OSHA State Plan States now cover state and local government employees, COSHRRA's new requirements for Safety and Health Committees, Programs, and Training would entail additional costs to public sector employers. The public sector cost of COSHRRA would be even higher in many states where there is presently no OSHA coverage of state and local government employees.

The same parameters for programs, training and committees used in estimating private sector employer costs were used in estimating the cost to governmental employing units in complying with the requirements of COSHRRA, except that penalty and litigation costs were excluded. The cost to extend COSHRRA to 200,000 governmental employing units and their 17.9 million employees was estimated at \$4.2 billion. COSHRRA includes no funding to offset these federally mandated costs that will be imposed on state and local governments.

Unfortunately time does not permit me to go into detail in describing the other components of the cost estimate. These are discussed detail in the EPF report. But I do need to point out that only the most prescriptive elements of COSHRRA were included in the EPF cost estimate. COSHRRA includes many other provisions that would entail significant employer compliance costs which cannot be estimated at this time. These unestimated costs include, among others, the cost of changes to equipment and processes required by the new standards called for under COSHRRA, the change in the criterion for standards, the cost for exposure monitoring and medical surveillance, the mandated ergonomic standard and the lost production time resulting from the immediate abatement authority granted to OSHA inspectors and the COSHRRA-granted right of workers to refuse to work if they have a reasonable apprehension of injury.

Would Benefits Offset these Costs?

COSHRRA is, of course, intended to produce both public and private benefits, potentially including monetary benefits to employers that may offset some of the increased employer cost. Employers generally agree that there are savings to be realized from a safer workplace. The question here, however, is the extent to which the provisions mandated by COSHRRA, particularly the administrative and paperwork provisions included in the EPF cost estimate, will reduce occupational injury and illness rates, and to what extent such reductions may offset employers' costs of compliance with COSHRRA.

Only a few of the industry safety and health experts interviewed were of the opinion that the COSHRRA mandates would bring about significant improvements in worker health and safety. Many did not foresee any improvements resulting from COSHRRA. In fact, there was a tendency to see COSHRRA's prescriptive requirements with regard to programs, committees and even training and education as requiring employers currently involved in safety and health programs to significantly alter effective efforts, rebuilding them to fit COSHRRA's specific requirements, causing disruption, inefficiency, and even an adverse impact on injuries and illnesses.

The most direct measure of the monetary costs to employers of occupational injuries and illnesses, and potential monetary benefits from reductions in injury illness rates, is annual workers' compensation premiums. For 1988, the latest year for which data was available when we undertook our study, these premiums totalled about \$43 billion annually, including public employee programs.

In spite of a certain degree of experience rating in the assessment of workers' compensation premium rates, the workers' compensation system does not appear to be very responsive to changes in injury-illness rates. Premiums have risen dramatically in recent years, far out of proportion to changes in injury-illness rates. A major reason for this is, of course, increases in medical costs and increases in wage levels and therefore in compensation payments, the two principal components of workers' compensation costs.

Over the 20 year history of the original Occupational Safety and Health Act, data on occupational safety and health trends, while generally favorable, are mixed. Nevertheless, workers' compensation premiums have risen more than seven-fold during this period, and have doubled as a proportion of total payroll costs.

Even assuming COSHRRA would bring about improvements in injury-illness rates, and assuming a proportionate decline in workers' compensation premium payments and other costs, employers' workers' compensation savings would be modest in comparison to COSHRRA compliance costs, since dramatic declines in injury-illness rates are not likely. If one were to assume a net improvement of 10 percent in occupational safety and health due solely to COSHRRA and a proportionate reduction in workers' compensation premiums (dramatic declines by historical standards), this would result in a savings to employers in workers compensation premiums of only \$4.3 billion. And these savings would not appear in the first year, but would take a period of years to materialize. The consensus of experts interviewed for this study was that the benefits of COSHRRA would be modest at best, and that offsetting monetary benefits to employers, if any, would be limited to modest reductions in insurance costs.

Thank you for the opportunity to present the Employment Policy Foundation's analysis of COSHRRA's employer compliance costs. I will be pleased to try to respond to any questions you may have.

The CHAIRMAN. Thank you very much.

I was wondering, Mr. McGeady, do you know how many people have actually gone to jail under the criminal provisions under the existing OSHA statute since it has been in existence?

Mr. MCGEADY. I have no idea, Senator.

The CHAIRMAN. You do not know, then?

Mr. MCGEADY. I have no idea. I do not know whether there have been any.

The CHAIRMAN. But you think it is too severe a standard, and you do not know how many people have been convicted?

Mr. MCGEADY. I think that the proposed standard of enhanced criminal penalties for employers who theoretically are trying to meet not only the letter but the spirit of the law is just egregious beyond belief.

Example: OSHA will—

The CHAIRMAN. The question was do you know. Do you know?



Mr. MCGEADY. No, I do not know.

The CHAIRMAN. OK. That was the question. The answer is one person. One person.

Mr. MCGEADY. Now that you say that, I remember.

The CHAIRMAN. Yes. Five hundred thousand men and women have been killed on the job since the time of enactment of the standard, and one person has been convicted. The standard that has been used by the courts to determine if a violation is willful is as follows: "The failure to comply with safety standards under the Occupational Safety and Health Act is willful if done knowingly and purposely by an employer who, having a free will or choice, either intentionally disregards the standard or is plainly indifferent to its requirement." That does not seem to me to be accusing all our employers in this country of criminal conduct. And what we are doing is using the standard and extending it to willful violations that result in serious bodily injury.

It is difficult for me to understand how employers can feel that they are being put upon by this standard.

Mr. MCGEADY. Senator, the point is, the case that you are referring to, if my memory is correct, very bluntly, the person should have been in jail 5 years earlier. There was a long history—

The CHAIRMAN. I am not interested in that. I am talking about the standard. That is the question. We can get back into whether a particular employer in a particular case was guilty or not guilty, but the question is the standard. That is what the law is, and those are the instructions to the jury.

Mr. MCGEADY. The standard as imposed—or, proposed; I am sorry—the standard as proposed would say that for a willful violation, OSHA on the second occurrence of an injury can write a willful violation. Now, I hear what you are saying, but it goes to my point that it becomes an "us versus them."

The CHAIRMAN. Well, I just want to say that your characterization of this legislation is not what it is. I would like you to read it. You know, one of the favorite techniques around here is to misstate what is in proposed legislation and then take issue with it. And that is just what is happening here today.

Mr. MCGEADY. Senator—

The CHAIRMAN. You can make any additional comments and submit any other testimony.

Mr. MCGEADY [continuing]. With respect, Senator, from an employer's standpoint, I am not misstating what I perceive to be in the legislation, given the field activities of the OSHA inspectors. Now, if you read it out of context, or just without outside influence, it does not sound that bad, but when you put it together with how the current OSHA organization works, it becomes a very severe impediment to cooperating with anybody in the famous, "I am from the Government, and I am here to help you." It would just become, as I say, an "us versus them" situation.

The CHAIRMAN. Senator Kassebaum.

Senator KASSEBAUM. I am curious—let us take it down to a little more practical point—you mentioned these plugs over on the camera equipment here, that because there is not the correct cap, would warrant a \$10,000 fine?

Mr. MCGEADY. No, ma'am. There is an OSHA requirement that any piece of electrically operated equipment have what is known as a "ground fault interrupter" to protect the user of the equipment. I do not see them in evidence here. Now, I will say right up front, the Congress is, as I understand it, out of the OSHA law—

Senator KASSEBAUM. Exempt?

Mr. MCGEADY [continuing]. Exempt from the OSHA law.

Senator KASSEBAUM. Well, no, not under this new legislation.

The CHAIRMAN. Under either legislation.

Senator KASSEBAUM. Pardon?

The CHAIRMAN. Under either piece of it.

Senator KASSEBAUM. Right. We would even have to have our own safety and health committee, I think. But my point is, if indeed that is the case—and I do not understand it well enough to know whether it is grounded correctly or not—but the point that those of us who have questioned some of the penalties and mandates as construed do not quarrel about health and safety, or that it is important, but in this instance, for instance—and we may be making a case of something that does not even exist—the inspectors ought to say this is not in place, this is a problem, and you should correct it, for your own well-being. And rather than receiving a fine, it should be corrected.

Mr. MCGEADY. I agree.

Senator KASSEBAUM. And I think this is what we are trying to get at.

Mr. MCGEADY. And the current OSHA legislation, and as I read the proposed legislation, does not permit that.

Senator KASSEBAUM. And I think that is the concern with, as you express it, an "us versus them" situation; you develop an adversarial sort of relationship that comes from uncertainty perhaps, and certainly sometimes neglect. But if the purpose is to improve safety and health conditions, and many businesses—and the Wall Street Journal article, I think, points to this—are driven to these things out of their own self-interest, largely because of workers' compensation today, and the costs of that, so it is in the interest of the business community to do these things, and how best to further that relationship I think is what we are trying to get at.

Mr. MCGEADY. And the current situation with workers' compensation underwriters—if they do not have an active safety department, you should not be with them. You should find a comp underwriter that has an active safety department.

What I am saying is that in a great percentage—not all, and I am the first to admit that—but in a great percentage of the current manufacturing and construction and nonfarm employment that have workers' compensation insurance, there must be some sort of interaction between employees, employer, and safety department, or you just are not going to be able to afford the insurance; you are going to be out of business.

Senator KASSEBAUM. Thank you very much. I guess, then, we will check this out, whether we are in a safety violation here.

The CHAIRMAN. Well, the cameraman tells me that they are grounded.

Mr. MCGEADY. Senator, I said I did not observe ground fault interrupters.

Senator KASSEBAUM. Well, as an example, if they were not, we would want to know about it and correct it, right?

The CHAIRMAN. That is exactly what we would say.

On that note, Senator Wellstone?

Senator WELLSTONE. Thank you, Mr. Chairman. I will be relatively brief.

Mr. McGeady, the Republican bill proposes to codify the small business exemption from general inspections, but a recent Wall Street Journal article reported that small businesses actually have a much higher injury rate than large employers. So the question becomes how do we justify an OSHA exemption if it means that we end up not protecting those workers who are the very workers most in need of protection?

Mr. MCGEADY. Senator, I read the Wall Street Journal article, and I am not proficient enough in the background data to challenge the statistics, but it seemed to me that the numbers used by the writer of the article were off-base with respect to what I am familiar with. Unfortunately, I do not know his database, and therefore I cannot comment on it.

But let us assume for the sake of argument that what he says is essentially correct. The committee structure, if you will, for safety committees in a small business is a committee of the whole. You do not in a small business operate in a vacuum. For the most part, you know your people, you know their wives, you know their children, and you know that Aunt Minnie has had a stroke, and you deal with personnel relations on a very intimate basis. When you get up to a business our size, which has about 55 or 60 employees currently, I still know the first name of each person in the business, and I know most of their families.

We have in our industry—and I do not want to bore you with what happens in the construction industry—but the bill as written would just not work in our industry, because we change job sites every day, and there are a few technical problems that would have to get worked out. I alluded to one earlier, that is, the site control that OSHA currently requires of the principal contractor on the site, whether or not that contractor is the general contractor or the owner. It would mean, for example, in our business, under the literal reading of the proposed legislation, we would have to take all the people who come in on the site and send them to our school, because we are in control of the site, and we could be held responsible. But to exempt small businesses from any regulation, I do not think is what we are asking for.

Senator WELLSTONE. I was just referring to—and I will run rapidly through these questions—if there is an exemption from the general inspection requirement, and we do not have data contrary to what is in the Wall Street Journal piece, it strikes me that we would not want to exempt those businesses where, in fact, quite often, we see the highest injury rates—that is my only point—if we are really serious about some kind of major reform effort.

My second question is that same Wall Street Journal—which I do not think anybody would call a hotbed of ultra-liberal thought—reported that safety and health committees—and we are going to hear more about this in Minnesota, because I think we have a very important history to look at—“not only reduce accidents, but also

lower workers' compensation costs, sometimes sharply." And the Journal also reported that "The effect is particularly dramatic for small businesses." I am on the Small Business Committee, and I love being on that committee because I come from a State with many small businesses, and of course, I do not need to talk to you about the importance of small businesses.

The question is how can small businesses afford not to take this sensible step of having these committees if in fact it has such a dramatic impact on reducing workers' compensation costs?

Mr. MCGEADY. I agree, the point being, though, that the way the bill is currently written—the way, for example, our committees work—would not be "legal." It would not work because of the way we would have to change employees and pieces of equipment in the construction industry. It just would not work for our particular situation. And I know from an earlier meeting with the Secretary of Labor that it would not work for Kodak. Their senior representative said it will not work for Kodak, which has a very good committee structure in place, and it is working very well.

The point here is that there is no flexibility. I agree with what Representative Fawell said. We are not against committees; we are against the way they are structured. I think you need to look at the nuts and bolts of how this is done and allow a lot more flexibility.

Senator WELLSTONE. And built into your definition of flexibility, I take it, is not moving away from the idea of joint labor-management committees?

Mr. MCGEADY. Absolutely not. I think in small businesses, the perception is that it is the "Boss Tweed" of the 1800's or something, with the three-piece suit and the watch fob and the overbearing stomach, and all of the other folks out there who are struggling for an existence. That is not reality; that just is not reality.

In a small business today, if the employer and the employees do not work together, it is not going to be a small business for very long.

Senator WELLSTONE. By the way, my understanding is that the bill allows the Department of Labor to tailor its regulations to apply to different kinds of businesses and industries, which would meet the very objection that you raise. So I think that is in the bill.

My last question is for you, Mr. Holt. Your study assumes that all covered employers, when you measure the cost, would be starting from scratch, in other words, that none of them already have—and I know in Minnesota, again, as an example, many businesses have safety and health programs and have committees already—and that none of them currently provide employee training. But as you well know, millions of employers already have such programs in effect. So I guess I am asking: how can you justify that assumption when in fact we know that many companies and businesses are already doing this?

Mr. HOLT. Well, Senator, first of all, we do not assume that everybody is starting from scratch. What we propose to the industry safety and health experts from which we developed our input data from the study is what would be required to meet the requirements, the prescriptive requirements, of COSHRA. And frankly,

most of the firms that we were dealing with were larger firms who did have various programs in effect.

Senator WELLSTONE. But if I could interrupt you for a second, your methodology was interviewing; your data is not based upon the actual experience of companies. It is based upon a set of interviews that you had; correct?

Mr. HOLT. That is correct. It is based on projections of the requirements to implement the provisions of COSHRA, based on industry safety and health experts. That is correct. It is not simply taking an average of the numbers everybody said, and our methodology is described in some detail in the report. But the overwhelming opinion of experts and firms that in fact had significant programs was that the prescriptive requirements of COSHRA with respect to committees, with respect to plans, with respect to training, would require them to essentially have parallel programs—the exercises they would go through to meet the requirements of COSHRA, and then the programs that they have in place now to actually address safety and health. They did not see a substitution effect. They saw an additive effect.

Senator WELLSTONE. Mr. Chairman, I have used up my time. I may pursue that further with you, if that is all right.

Mr. HOLT. I would be happy to talk with you further, yes.

Senator WELLSTONE. Thank you.

The CHAIRMAN. Senator Hatch.

Senator HATCH. Thank you, Senator Kennedy, Mr. Chairman.

Mr. Holt, as I understand it, you have done this study, and is the \$61.87 billion what you estimate will occur annually?

Mr. HOLT. Right. This is the annual cost. This is not the startup cost. This is the annual recurring cost. For example, this would not include the cost of establishing programs for firms that did not have them. It would not include the initial training of all the employees and firms that did not do training. This is just the annual recurring cost of training the new employees that are hired during the year and that sort of thing.

Senator HATCH. So the figure would actually be higher in practice.

Mr. HOLT. Well, the startup costs certainly would be higher.

Senator HATCH. If you add those in.

Mr. HOLT. If those were added in, that is correct.

Senator HATCH. But you are saying that annually, this new bill will cost almost \$62 billion.

Mr. HOLT. Yes, based on the cost parameters in our study.

Senator HATCH. Do you know of any other studies in this area that either agree with you or contradict you?

Mr. HOLT. I do not know of any studies that have attempted to do as we did here and make estimates for the entire economy. There is an enormous amount, as I am sure you know, of anecdotal data from individual firms on an individual year. I do not know of any economy-wide study.

Senator HATCH. And some of these costs will have to be paid for by the States and local governments.

Mr. HOLT. Well, we included an estimate of the cost for State and local government employing units, of which there are some 200,000 employing about 17 million employees. We estimated the

cost of their meeting the new requirements of COSHRA. We did not include in that any estimate of the cost for States that are not State plan States getting up to compliance with existing OSHA. This is just the additional requirements of COSHRA. And that estimate was \$4.1 billion.

Senator HATCH. But these are mandates for which there will be no reimbursement if this bill is enacted as currently proposed.

Mr. HOLT. That is correct. There is no provision for reimbursement in the bill, at least.

Senator HATCH. And it is undoubtedly going to be a lot worse, according to your estimates, than the approximately \$62 billion you list here

Mr. HOLT. Again, their initial costs would be higher, and the costs for States that are not already State plan States, and that is about half the States—

Senator HATCH. You are saying that your estimates are about 3 percent of total nongovernmental payrolls as of 1990.

Mr. HOLT. Right.

Senator HATCH. So naturally, they will be up as of 1994. And you have got almost 11.8 percent of business net income in 1990.

Mr. HOLT. Yes. That is for the private sector costs and the private sector payrolls; right.

Senator HATCH. OK. Mr. McGeedy, can you generally describe the type of paperwork and employee notice requirements that Federal, State and local governments currently place on your business?

Mr. MCGEADY. Senator, I do not want to answer a question with a question, but with respect to OSHA or in general?

Senator HATCH. OSHA.

Mr. MCGEADY. With respect to OSHA; we of course have the annual reporting that is required. That is a little bit burdensome in the month of January, but the rest of the year not too bad. We have the requirements to file with State and Federal agencies all of our hazardous materials data sheets and hazardous materials protection plans, and hundreds of pages of data dealing with hazardous materials only, many of which are grossly duplicative, but that is the current status of the law. We also have on a required basis State reports and, of course, workers' compensation reports and any of the first injury reports and everything that goes along with that.

We believe in our firm that the best estimate is that it requires one of the senior managers of the nature of 8 to 10 hours a month.

Senator HATCH. Just to fill out the forms?

Mr. MCGEADY. Just to deal with the regulatory aspects of MOSHA, which is the Maryland Occupational Safety and Health Act, and OSHA. And of course, in our case, we also come under the Jones Act and some other things that most normal employers would not have to deal with.

Senator HATCH. Do you expect those burdens to go up if the Kennedy bill is passed?

Mr. MCGEADY. The biggest burden would be the written plan and the training aspects. We currently do training, which might or might not be based on my reading of the proposed legislation, meet the standards. We do not have the written plan that seems to be

indicated, simply because of the number of sites at which we work and things like that.

That could be dealt with, but it certainly would take considerable effort and manpower.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. Just briefly, Mr. Holt, did you look into the cost of the Oregon program at all?

Mr. HOLT. Our first impulse when we undertook this study was to look at the States, particularly Oregon and Washington, where the State statutes were somewhat similar to S. 1622.

The CHAIRMAN. What did you find in Oregon?

Mr. HOLT. In Oregon, frankly, the bill was too new, and there just was not experience that we could use.

The CHAIRMAN. Have you looked at it since, before testifying here this morning?

Mr. HOLT. We have not gone back and looked at it again. We have kept a continuing eye on the Oregon experience. There is no—

The CHAIRMAN. Well, don't you think that when you are making your estimates, and there is a real life situation where the requirements have already effectively been put in place, and as a result of implementing it, they have gotten cost savings, don't you think that that might be of some value or use?

Mr. HOLT. Senator, I do not think that experience data exists yet.

The CHAIRMAN. Well, it has been testified to.

Mr. HOLT. The anecdotal evidence—

The CHAIRMAN. It has been testified to by the person who ran it, and his estimate of the cost is \$350 per year per employee representative on the committee. This legislation says you have one employee representative per 50 workers.

Mr. HOLT. Well, yes. There is not anything you can take out of that number—or there is another number floating around of 600-some dollars per firm—there is not anything you can take out of either of those numbers that is applicable to estimating the cost of S. 575. We have looked at that. I am sure there will be experience data out of Oregon in time that will permit us to see whether something like 2 hours of training a year is an overestimate or not.

Senator HATCH. But \$350 per employee is not inconsequential, even if that were—

The CHAIRMAN. It is not per employee, Senator.

Senator HATCH. What is it?

The CHAIRMAN. You need one trained person per 50 employees. That is why the Employment Policy Foundation study, which talks about training every employee, is not talking about this legislation. What we are trying to look for is credible evidence on the costs of these provisions. You have heard the testimony of the people who have had actual experience implementing such a requirement. It is \$350 per year per employee representative on the committee. Ninety-five percent of businesses would need only one employee representative under S. 575, and—

Mr. MCGEADY. But Senator, that is playing games with numbers, if I may—

The CHAIRMAN [continuing]. Well, that may be for you—

Mr. MCGEADY [continuing]. Because we have only—

The CHAIRMAN [continuing]. That may be for you, but it certainly is not for the person who has actually implemented this requirement. With all respect, we are glad to have your comments.

Mr. MCGEADY. We have about 10 different locations with five to eight employees—

The CHAIRMAN. And so does Oregon. You do not think there is a construction industry out there?

Mr. MCGEADY [continuing]. I understand that, but what I am saying is the way I read the law—now, maybe I am in error—I would need a trained employee at each site. I believe that is in the law.

The CHAIRMAN. Well, why don't you take a look at where committee requirements are actually in effect, because it has the support of the contractors in the States of Washington and Oregon. Evidently, they are actually implementing similar kinds of programs, and they do not raise those kinds of objections. I respect your opinion, but—

Mr. MCGEADY. I say again, I support the training aspect, and I support the committee aspect—

The CHAIRMAN [continuing]. Yes, I am familiar with your—

Mr. MCGEADY [continuing]. I do not support the rigidity that is in the current legislation.

The CHAIRMAN. We appreciate that. OK.

We thank you both very much for your appearance here this morning, and we will go on to the next panel.

Our next panel includes Gerald McEntee, president of the American Federation of State, County and Municipal Employees; John Lennes, of St. Paul, MN, commissioner of the department of labor and industry; Charles DeVaney, Mayor of Augusta, GA, on behalf of National League of Cities; and John Sweeney, international president, Service Employees International Union, AFL-CIO.

We are trying to accommodate the different schedules of everyone here, and we will do the best we can. I understand Mr. McEntee has a scheduling conflict.

Mr. McEntee, we will be glad to hear from you.

**STATEMENTS OF GERALD McENTEE, WASHINGTON, DC, PRESIDENT, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, ACCOMPANIED BY RUTH RUTTENBERG, RUTH RUTTENBERG AND ASSOCIATES; JOHN B. LENNES, JR., ST. PAUL, MN, COMMISSIONER, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF MINNESOTA; CHARLES DeVANEY, MAYOR OF AUGUSTA, GA, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES; AND JOHN J. SWEENEY, INTERNATIONAL PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, WASHINGTON, DC, ACCOMPANIED BY BILL BORWEAGEN, SAFETY AND HEALTH DIRECTOR**

Mr. McENTEE. Thank you, Senator. Mr. Chairman and distinguished members of the committee, I am Gerald W. McEntee, the international president of the 1.3 million-member American Federation of State, County and Municipal Employees. We represent



State and local government workers, university and health care employees across the Nation.

We commend the chairman for introducing S. 575, the Comprehensive Occupational Safety and Health Reform Act, OSHA, and we appreciate the opportunity to share with you our views on this critically important legislation.

I would like to briefly summarize my statement and then submit my entire statement for the record.

The CHAIRMAN. All of the statements in their entirety will be included in the record as if read, and we will encourage witnesses to summarize their statements.

Mr. MCENTEE. Mr. Chairman, public employees perform work that is on average 80 percent more hazardous than in the private sector. Sewer and sewage treatment plant workers, highway workers, refuse workers and others do jobs that are five, six, and sometimes eight times as dangerous as the average private sector worker.

Yet in most States, Government workers do not have the legal right to call for an OSHA inspection. This situation is even more unacceptable considering that for 22 years, States have had the opportunity cover their public employees with 50 percent of the cost of such programs funded by the Federal Government. Yet only 23 States have taken advantage of this significant Federal subsidy.

Now I would like to address an issue that has been gaining momentum throughout the country—the issue of unfunded mandates imposed by State and local governments. State and local governments are complaining, and not without some justification, that costly mandates are being placed upon them by the Federal Government without providing any funding for implementation.

Am I too loud for you, Senator?

The CHAIRMAN. Oh, no. It is music to my ears. It is like being at one of your conventions. [Laughter.]

Mr. MCENTEE. I thought I sounded similar to your voice.

The CHAIRMAN. Just when I am talking about health care. [Laughter.]

Mr. MCENTEE. While there clearly needs to be a serious discussion in this country about the responsibility the Federal Government should play when it places new requirements on State and local governments, it is clear to us that this discussion should focus on the role State and local governments play as governmental entities, and not the role they play as employers. This is a major distinction which should not be lost in the discussion.

It may be perfectly legitimate to debate Federal versus State responsibility in funding various Federal requirements imposed by State and local governments. However, a public employer's responsibility to pay its employees a minimum wage, to defend their civil rights, provide basic health and retirement benefits, and yes, to guarantee a safe workplace, as every private sector employer must do, should not be part of this debate. Requiring State and local governments to provide safe workplaces is not an unfunded mandate. It is a responsibility, unfortunately, met by too few State and local government employers.

Because of continuing concerns about the cost implications of providing OSHA coverage, AFSCME recently commissioned an

independent study assessing the costs and benefits of public employee coverage, which we are releasing to the committee today. The study was conducted by Ruth Ruttenberg and Associates, and economic consulting firm, and Dr. Ruttenberg, the author of the study, is here with me today and prepared to answer any questions.

The title of the study, "Saving Jobs, Saving Lives," effectively summarizes the study's findings: We can save lives and save money. This study shows first that existing data prove that OSHA coverage is effective in reducing workplace injuries, illnesses and deaths. Second, it indicates that the overall cost of extending OSHA coverage to public employees is small in absolute terms and small compared to the economic benefits that would accrue. When workers are injured on the job, employers are faced with wage replacement costs, medical and workers' compensation costs, disability pension awards, and other indirect expenses involving investigating accidents, writing reports and retraining new workers.

The fundamental reality is that public employers are now paying more covering the expenses of employees who have been injured on the job than they would have spent on preventing those injuries in the first place by conforming with OSHA standards. Using National Safety Council data, it can be estimated that the cost of public employee workplace injury, illness and death just in those 25 States that do not have OSHA coverage reached \$8.7 billion last year. If we estimate using very conservative assumptions, that OSHA coverage would result in only an 8 percent reduction in workplace injuries and deaths. The Nation could save more than \$600 million per year if public employees were protected by the Federal Occupational Safety and Health Act.

Using less conservative assumptions, the savings could be as high as \$2.1 billion nationwide. The Ruttenberg study clearly shows that public employers will gain from OSHA coverage. We strongly urge all members of the committee to review its findings.

It is my understanding that last week, a member of this committee, Senator Nancy Kassebaum, introduced an OSHA reform bill identical to the bill introduced in the House by Representative Fawell, which does not contain coverage for public sector employees. We in our union and others find this regrettable, because congressional Republicans have been supportive of such coverage in the past. Congressman Fawell's original OSHA bill contained public sector coverage. I would respectfully urge members of this committee to consider OSHA coverage for all.

Let me conclude by stating the obvious. Public employees are ordinary American citizens. They do identical work, and they face identical, if not more serious, hazards. They should have the same rights as other citizens. This is an injustice that cries out for rectification.

It is time to pass legislation that will allow workers and management to take a larger role in making the worksite a safer place. We strongly support the other provisions of this important legislation—health and safety programs, health and safety committees, faster standard making, and more effective enforcement.

We want to thank the committee for the opportunity to testify on this important legislation, and we would be pleased to answer any questions you may have.

Thank you, Senator.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. McEntee follows:]

PREPARED STATEMENT OF GERALD W. MCENTEE

Mr. Chairman and distinguished members of the committee, I am Gerald W. McEntee, International President of the 1.3 million member American Federation of State, County and Municipal Employees (AFSCME), representing state and local government workers, university and health care employees across the Nation.

We commend the Chairman for introducing S. 575, the Comprehensive Occupational Safety and Health Reform Act (OSHA), and we appreciate the opportunity to share our views and our suggestions with you. I would like to briefly summarize my statement and submit my entire statement for the record.

In 1991, when I testified on this matter before the House Education and Labor Committee, I stated that each year 1,600 public sector workers are killed on the job. The National Safety Council recently released a report which states that number has now grown to 1,700. In addition, almost half a million public employees suffer disabling workplace injuries every year.

Public employees perform work that is on average 80 percent more hazardous than in the private sector. Sewer and sewage treatment plant workers, highway workers, refuse workers and others do jobs that are five, six and sometimes eight times as dangerous as the average private sector worker. Yet, in most states, government workers do not have the legal right to call for an OSHA inspection.

This situation is even more unacceptable considering that for 22 years states have had the opportunity to cover their public employees with 50 percent of the cost of such programs funded by the Federal Government. Yet only 23 states have taken advantage of this significant federal subsidy.

We have done everything possible to convince states to protect our members and other state and local government employees. We have conducted active, but ultimately unsuccessful, campaigns in several states to attempt to get public employee OSHA plans passed. When we ask for a law, management testifies that it is not needed. "We are already providing safe workplaces on a voluntary basis," they say. "We are in the middle of a fiscal crisis. OSHA will mean a reduction in government services, layoffs and wage freezes," they claim.

We have always thought this a curious argument. On one hand, they say they do not need OSHA regulations, because they already provide safe workplaces. On the other hand, they claim that being forced to make their workplaces safe will drive them into bankruptcy. So, why will it cost them so much to do what they are already allegedly doing anyway?

Now I would like to address an issue that has been gaining momentum throughout the country: the issue of unfunded mandates imposed upon state and local government. State and local governments are complaining, and not without some justification, that costly mandates are being placed upon them by the federal government, without providing any funding for implementation.

While there clearly needs to be a serious discussion in this country about the responsibility the federal government should play when it places new requirements on state and local governments it is clear to us that this discussion should focus on the role state and local governments play as governmental entities, and not the role they play as employers. This is a major distinction which should not be lost in the discussion.

It may be perfectly legitimate to debate federal-versus-state responsibility in funding various federal requirements imposed upon state and local governments, however a public employer's responsibility to pay its employees a decent wage, to defend their civil rights, provide basic health and retirement benefits, and yes, to guarantee a safe workplace, as every private sector employer must do, should not be part of this debate. Requiring state and local governments to provide safe workplaces is not an unfunded mandate. It is a responsibility—unfortunately not met by too many state and local government employers that every employer has.

Twenty-three states have provided OSHA coverage for public employees for decades now without adverse fiscal consequences. Many and perhaps most public employers in states that do not currently have OSHA coverage would not be starting from zero. While far too many public employees die every year, some public employers see the value in safety. Some improvements have been made because of union

pressure or because newer equipment tends to be safer. Most of our members in larger bargaining units are already participating in joint labor-management health and safety committees.

Because of continuing concerns about the cost implications of providing OSHA coverage, AFSCME recently commissioned an independent study assessing the costs and benefits of public employee coverage which we are releasing to the committee today. The study was conducted by Ruth Ruttenberg and Associates, an economic consulting firm. Dr. Ruttenberg, the author of the study, is here with me today.

The title of the study: "Saving Jobs, Saving Lives" effectively summarizes the study's findings. We can save lives and save money. This study shows, first, that existing data proves that OSHA coverage is effective in reducing workplace injuries, illnesses and deaths. Second, it indicates that the overall cost of extending OSHA coverage to public employees is small in absolute terms and small compared to the economic benefits that would accrue. When workers are injured on the job, employers are faced with wage replacement costs, medical and workers' compensation costs, disability pension awards, and other, indirect expenses involving investigating accidents, writing reports and retraining new workers. The fundamental reality is that public employers are now paying more covering the expenses of employees who have been injured on the job, than they would have spent on preventing those injuries in the first place by conforming with OSHA standards.

Using National Safety Council data, it can be estimated that the cost of public employee workplace injury, illness and death just in those 27 states that do not have OSHA coverage reached \$8.7 billion last year. If we estimate, using very conservative assumptions, that OSHA coverage would result in only an 8 percent reduction in workplace injuries and deaths, the nation could save more than \$600 million per year if public employees were protected by the federal Occupational Safety and Health Act. Using less conservative assumptions, the savings could be as high as \$2.1 billion nationwide.

Pennsylvania is the largest state in the country that does not cover public employees. This study found that the cities, counties, and Commonwealth of Pennsylvania could save \$30.7 million, approximately \$8 million accruing to the Commonwealth and \$22.7 million to political subdivisions—if public employees were covered by OSHA.

The Ruttenberg study was not limited to nationwide or statewide figures. We know that many of the big cities in this country are struggling through fiscal crises. In order to see how OSHA coverage would affect them, the study focused on the City of Philadelphia. It found that Philadelphia could have saved \$7.6 million in costs associated with lost-time work injuries, expressed in 1992 dollars, \$2.9 million in service-connected disability costs, and \$840,000 in medical costs payable by the City and associated with workplace accidents.

In order to determine what kind of costs the City of Philadelphia would face, inspections were undertaken of several Philadelphia public workplaces. An on-site inspection at one work site in Philadelphia found over two dozen safety violations—violations which would cost perhaps a total of \$1,500 to correct. At least three workers from that site are on permanent disability, and there have been other serious injuries—finger tip amputations, lower back and knee injuries, and a multitude of other problems. The \$1,500 for hazard abatement is less than one month of a disability pension for just one disabled worker.

The Ruttenberg study clearly shows that public employers will gain from OSHA coverage. We strongly urge all members of the Committee to review its findings.

OSHA coverage for public employees is not simply a matter of dollars and cents, but a basic issue of fairness and equality. Ultimately, it is impossible to quantify the cost to the victims or to their families in suffering and sorrow of workers in their twenties or thirties disabled for life by serious injuries or illnesses. Who can put a value on a human life lost in a preventable accident, in children who will grow up without their parents or grandparents, parents who watch their children die in the prime of their lives just because they are public employees?

A coalition of over fifty national organizations endorsing S. 575 recently held a press conference on Capitol Hill to let members of the Congress and indeed the public know that the Comprehensive Occupational Safety and Health Act has widespread support. The "Safe Jobs Now" coalition is a broad-based coalition representing civil rights, women's, religious, environmental, consumer, labor and other groups. For the record, we would like to submit a list of the organizations supporting the OSHA reform legislation.

Let me just conclude by stating the obvious: public employees are ordinary American citizens. They do identical work, they face identical, if not more serious hazards, they should have the same rights as other citizens. This is an injustice that cries out for rectification.

It is time to pass legislation that will allow workers and management to take a larger role in making the worksite a safer place. We strongly support the other provisions of this important legislation—health and safety programs, health and safety committees, faster standard making and more effective enforcement.

We want to thank the Committee for the opportunity to testify on this important legislation, and we would be pleased to answer any questions you may have.

The CHAIRMAN. Mr. Lennes.

Mr. LENNES. Thank you, Mr. Chairman. My name is John Lennes, and I am commissioner of the department of labor and industry in the State of Minnesota.

The CHAIRMAN. I will note that both of our colleagues from Minnesota were here, and they would want me to extend a warm welcome to you, which I do. I know they are both very much involved in this issue and were looking forward to your testimony, and Senator Wellstone will be back momentarily.

Mr. LENNES. Well, Mr. Chairman, it is a pleasure to appear before a committee on which our State is so well and abundantly represented.

On behalf of our Governor and the employees of the department of labor and industry, we certainly welcome the opportunity to comment on the legislation before the Senate.

My background is a little bit different than that of a typical commissioner of labor in our State. I was formerly vice president and general counsel of the State Chamber of Commerce, as well as director of government affairs for the Minnesota Business Partnership, which is essentially a State version of the Business Roundtable. I co-chaired the workers' compensation advisory council from the employer perspective. So I see some of the concerns that are raised a little bit from a perspective that has been shared with you earlier, but I think I would differ with some of the conclusions that were presented to you on that basis.

We have an outstanding safety record in Minnesota. We have shared the safety annual report with staff, and that is a tribute to the combined efforts of employers and employees in our State and, I think, oversight by Minnesota OSHA.

Our system in many ways represents a system that is similar to that being proposed and considered by this committee, and I think that in a certain sense, we are testifying here to tell you how that works when it has actually been in place in a State.

I should also say at the outset that our OSHA inspectors in a recent survey made of business owners around the State of Minnesota received the highest ratings of any State employees with whom they come in contact on any regular basis. So OSHA may be oppressive in some States, and I cannot speak to that, but in the State of Minnesota, our people are very well-respected.

There are a number of aspects of this legislation that are very important. Prevention is the key. Health and safety programs and joint committees work. It is as simple as that. Since 1990 in Minnesota, we have had something called the AWAIR program, "A Workplace Accident and Injury Reduction Act," which has mandated joint committees to be set up with employer-employee involvement. We think that is very key. At first, that was limited to employers with over 50 employees. Since 1993, that applies to all of them.

Since 1992, we have mandated labor-management safety committees be set up, so we are one of those States with both requirements in place. That applies to employers with 25 or more employees and those in industries with high lost workday rates. So we tried to focus that, and I think that is important as well.

It is a little bit too soon, I think, to have definitive evidence that these are remarkably effective, but we have seen remarkable specific evidence from company to company that they work very well. I will give you a few examples, and I have materials I can share with the committee on that.

Marigold Foods, a large dairy processor in our State, has implemented a safety committee, and just since 1991, they have seen a reduction of 50 percent in their lost time accidents. In that same period of time, they have seen a reduction in lost days of two-thirds. This is a phenomenal decrease.

And they are not alone. There is a large international construction company in our State that set up their own safety consultation program internally, working jointly, labor and management, and since 1989, they have seen their overall cost of workplace accidents drop from \$1.57 per hour per employee down to \$1.18 in 1992, and it is estimated it will be 74 cents by 1993.

Atmosphere as much as anything else is responsible. It is not purely safety; it is a sense of a joint commitment on the part of management and employees working toward a better workplace. There have been a number of studies that we do not need to go through that have shown that, I think, clearly enough that it is no longer a subject of serious debate.

A second aspect of this bill that I think is extremely important is the one that Mr. McEntee just spoke to, and that is the coverage of public employees. We absolutely support that.

There are three basic reasons why. One is simply credibility. At the State of Minnesota, when we get a complaint from a private company, saying, "Why are you doing these things to us?" one of the first things they ask us is, "Do you do this to yourself? Does Government require the same standards of itself that it does of us?" And the answer to that is yes, we do. It takes a remarkable amount of the antagonism out of their system.

Second, we also do provide that the fines collected under our OSHA system go back into the workers' compensation system. They go back to reduce the costs of overall workers' compensation to employers. It is in no sense a "bounty" kind of system; we think that is also important.

The second facet does relate to the first, and that is one of simple fairness. You should live by your own rules.

The CHAIRMAN. Excuse me. So if you collect a fine, that goes into the workers' compensation fund; is that correct?

Mr. LENNES. Yes, Senator, it does. There is an overall fund that we collect for to pay the costs of workers who are injured whose employers did not purchase workers' compensation, and a few other sort of societal costs. All OSHA fines now, as of about 2 years ago, go to keep the cost of that assessment down. So you can say to an employer that if you do not have safety violations that you have had to pay for, the net effect of OSHA fines in the State of Minnesota is to actually decrease your workers' compensation costs.

Government should live by its own rules. That is a good way to learn what the rules ought to be.

And third is the point that I think Mr. McEntee made very well, and that is if OSHA is there to protect, there is no reason why we should limit that protection to only some of our citizens. Some have said that Government fining Government is a pointless exchange of money, a little bit like giving yourself a transfusion, but I find that is not the case. Officials or bureaucrats who find that their agency has suffered OSHA fines have a difficult time explaining that sometimes to the funding mechanism, whether it be at the legislature or at the common board, and that is appropriate. It can be inconvenient. Not long ago, our agency levied a fairly high citation against a school district in rural Minnesota—one in which, oddly enough, I happen to have a vacation cabin, so I was a taxpayer there. The local folks were very upset. They asked what point is there in coming in and taking scarce education dollars and putting them into the OSHA coffers. And we said, well, if that were what we were about, there would not be a point, but the point was we had a hazardous place there.

What we did, though, was to work with that school district, once we got past the point of initial consternation. We reduced their fines by allowing them to abate the situation that had prevailed in that district and also worked with them to do what school districts do best, and that is educate. Through them, our department put on a series of 10 workshops, 13 consultations, and an ongoing relationship with school districts throughout the State of Minnesota, using their experience and building on it to teach others. And we think that as a result, the outcome is that we will have safer school districts for all.

The other thing we pointed out was that this might have been a \$36,000 fine reduced to \$9,000, but that stood in contrast to \$100 million in workers' compensation premiums annually paid by State, local and school districts in our State. So the perspectives were a bit strange.

A third facet of the legislation that is very important, I think, is the involvement of employees as partners in this entire system. We think that is totally appropriate. Some question has been raised as to what would happen if we allowed employees to become parties to the contestation process and to involve themselves in that respect. In Minnesota, we have had that possibility now for over 20 years. Since 1975, they have been allowed to contest violations and propose penalties for the failure to apply a penalty. The involvement has been rare. We have averaged about one per year. So it is not something that has turned out to be abused. It just has not worked that way. In part, I think that is due to our OSHA appeal board. We have two distinguished experts on there, one former president of the State AFL-CIO, and one former law professor and general counsel to a large timber-producing company. They have donated their time, and they are very, very fair, so there is a good deal of confidence in that.

There are a few caveats that I would leave you with. One is a concern that many of the State plan administrators have that we may be moving toward a time when there is not enough freedom

of States to act and to respond in a broad way to their problems. I know that the OSHA people have shared that with you.

The second is in the area of criminal sanctions. It is a topic not without controversy. We have used them in the State of Minnesota, not under the OSHA statute but under other statutes, and they can be a two-edged sword. I would just caution that the most effective plans I have seen that involve genuine labor-management cooperation are there because both sides understand it is win-win. It is possible for this to degenerate into confrontation, and I would hope we could avoid that.

Citations should, in my judgment, be violation driven, not outcome driven. One concern that some people have is that if you have a system that simply responds to a serious incident and goes out and finds a violation, then you will have a system where those violations are only enforced in that event. That is kind of a cart-before-the-horse situation.

As administrators of systems, we are constantly faced with oversight from the public, the media and others, and it seems as though, on a daily basis, the objection is there is too much red tape and there is too much to go through. Then, as soon as an accident takes place, it is: Where were you? All of a sudden, the red tape should have been applied the day before, at that accident site.

It is very easy for administrators to overreact, and we try to avoid that.

I think there is a good deal more that I have touched upon in my prepared testimony, Senator, but at this point, I will certainly stand for questions.

The CHAIRMAN. Thank you very much.

Mr. McEntee, I know you have to leave in just a few minutes. Maybe Dr. Ruttenberg could remain, and after we have heard the panel, and I would ask her for any comments she may wish to make on Mr. Holt's financial assessments of the legislation.

Mr. McEntee. We would like the study put in the record as well, Senator.

The CHAIRMAN. Yes, we will include that study in the record.

Thank you very, very much.

[The study of Ruth Ruttenberg and Associates may be found in the files of the committee.]

The CHAIRMAN. Mayor, we are glad to have you here.

Mayor DeVaney. Thank you, Mr. Chairman.

I am Charles DeVaney, Mayor of the City of Augusta, GA, and today I am speaking on behalf of the National League of Cities and 170,000 municipal officials from cities and towns across the country. I would like to mention that I serve on the board of directors for the National League of Cities, and I am its representative to our own energy, environment, and natural resources committee.

Certainly, I would like to thank you, Mr. Chairman, for this opportunity to express the issues and concerns of the public sector with respect to the proposed changes to the Occupational Safety and Health Act. I sincerely hope that the points that I make today will be taken under advisement while debate over this important issue moves through the legislative process.

My remarks today will focus on several issues of concern to local government officials with respect to what we view as an additional



proposed unfunded Federal mandate. My comments will be brief, and I will certainly be glad to provide more detailed information as requested following this hearing.

First, I would like to point out that to my knowledge, there has been no research to date that concludes that public sector employees are in fact at a higher risk to injury or death because of their lack of coverage under the OSHA requirements. Further, this pending legislation would have us assume that municipalities across the country are unresponsive to the work hazards of their employees and have taken no steps to ensure their safety on the job.

Municipal employees are not nameless faces to any of us. They are our wives and husbands, and daughters and sons, and our friends. I would therefore recommend that before the implementation of this proposed broad-based, far-reaching, costly Federal mandate, that steps be taken to evaluate the effectiveness of the efforts and programs currently being undertaken by municipalities.

I would like to point out that in my own city, we have had a longstanding policy manual, and many of the things we do, I think, are exactly what we should be doing as municipalities. We maintain ongoing programs to see that our employees clearly understand all facets of our safety and loss prevention program. We work to reduce and control and avoid employee exposure to all known or suspected occupational safety and health risks. We make reduction, control, and elimination of risk a top priority in all of our plans. We establish and maintain community with all employment levels to keep employees aware of the safety and health factors of their jobs. We provide incentive programs to encourage employees to identify, control and eliminate safety and health risks, and we establish and maintain an accident and injury reporting system and recordkeeping system in our community. And I am certain that this is indicative of what many, many other communities of all sizes do throughout our Nation.

A second point that has been mentioned several times today that I believe needs reconsideration is the provision that any employer or any officer, management official or supervisor having direction, management, control or custody of any place of employment who willfully violates any standard, rule, or other promulgated order pursuant to Section 6, or any regulations prescribed pursuant to this Act, and that violation causes serious bodily injury to any employee, but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with Section 3671 of Title 18 of the U.S. Code or by imprisonment for not more than 5 years, or both.

The potential impact of such provisions on municipal elected officials cannot help but have a chilling effect on the ability of Government to attract dedicated civil servants. The vast majority of municipal elected officials are unpaid volunteers, or receive nominal compensation in an effort to serve their communities. I think their motives are always good, and they are concerned over their employees and the employees' safety.

Moreover, municipal government is not a for-profit enterprise, but rather one based on concern and commitment to the lives of the

families it serves. I believe that at this point, it is important to emphasize that this is a key difference between the public and the private sector employer.

Third, this bill requires a one-size-fits-all, joint employer-employee safety committee. Many cities use similar committees to good effect. However, these committees are not established under as rigid standards as proposed under this legislation. Since every employer would be required to establish a committee at every worksite with 11 or more workers, the requirements for municipal governments could mount rapidly, particularly considering the multiple locations of such public facilities as schools, fire and police stations, and public works facilities.

The city of Houston, for example, would be required to establish worker safety committees at over 400 worksites. In my own community, I can think of dozens of worksites, many of which are adjacent to each other or within a 3- to 4-square-block area. I can think of two separate fire stations, a public transit facility, a public transit maintenance facility, as well as our other worksites that have the city sanitation equipment. All are adjacent or across the street from each other or, in the case of the fire stations, within a few blocks of each other.

The final and perhaps most compelling factor to cities and towns is where will we find the money to implement this mandate. The additional funding to comply with the new OSHA regulations in this legislation, not to mention the overall of current non-OSHA worker safety programs like the one in my city, has not yet been estimated by the Congressional Budget Office. I believe that this data is essential to an informed discussion of OSHA reform.

Notwithstanding the lack of cost estimates to local governments, I can tell you that it will cost the city of Augusta and other cities like it a great amount of taxpayer money. I know that at the Federal level, you face the never-ending challenge of balancing the Federal budget, and you understand that the budget process requires that as more dollars are spent on one priority, fewer are available for other priorities. Cities, too, must balance their budgets, and in my State, it is a constitutional requirement. We have no choice.

We are especially concerned that the new Federal requirements would force many cities, especially central and rural cities, with the greatest distress and highest crime rates, to make cuts in municipal programs, personnel and services critical to the safety and health of all citizens. And yet we all want to do what is necessary to protect the safety and welfare of those who work for us—and, as has already been said, many of whom we know by name and know their families and know their situations. But yet at the same time, we are called upon by our taxpayers to spend our money wisely, with the greatest emphasis on cost-effectiveness. In this day and time, we can hardly afford to cut public safety. We cannot cut police or fire. We do not want to cut the arts. And there are great needs in our central cities for housing rehabilitation and other services that perhaps have gone lacking for far too long.

In summary, we share with you, Mr. Chairman, your concern for our Nation's work force. We would work together for cost-effective

programs that focus scarce resources on the most central safety issues, and we want to make clear that we cannot afford to risk the safety of our work force. Please join with us to examine thoroughly the safety practices and procedures currently in place in the public sector.

Again, I hope that as this discussion proceeds, this type of information will be vital and necessary for the thorough and proper discussion of this most important issue.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Mayor.

[The prepared statement of Mayor DeVaney follows:]

#### PREPARED STATEMENT OF MAYOR CHARLES DEVANEY

Good morning. I am Charles DeVaney, Mayor of the City of Augusta, GA, speaking on behalf of the National League of Cities, and the 170,000 municipal officials from cities and towns across the country. I would like to thank you, Mr. Chairman, and the members of the committee for this opportunity to express the issues and concerns of the public sector with respect to the proposed changes to the Occupational Safety and Health Act. I strongly urge that the points I make today will be taken under advisement while debate over this important issue moves through the legislative process.

My remarks today will focus on several issues of concern to local government officials with respect to this proposed unfunded Federal mandate. My comments will be brief and I will provide more detailed information as requested following this hearing.

First, I would like to point out that to my knowledge there has been no research to date that concludes that public sector employees are in fact at a higher risk to injury or death because of their lack of coverage under the OSHA requirements. Further, this pending legislation would have us assume that municipalities across the country are unresponsive to the work hazards of its employees and have taken no steps to ensure their safety on the job. Municipal employees are not nameless faces to us. They are our wives, our husbands, our daughters, our sons, and our friends. I would therefore recommend that before the implementation of this proposed broad-based, far-reaching, costly, unfunded Federal mandate, that steps be taken to evaluate the effectiveness of the efforts and programs currently being undertaken by municipalities.

A second point that I believe needs reconsideration is the provision that "any employer or any officer, management official, or supervisor having direction, management, control or custody of any place of employment who willfully violates any standard, rule or order promulgated pursuant to section 6 or any regulations prescribed pursuant to this act and that violation causes serious bodily injury to any employee but does not cause death to any employee shall upon conviction be punished by a fine in accordance with section 3671 of title 18 of the U.S. Code or by imprisonment for not more than 5 years or by both."

The potential impact of such provisions on municipal elected officials will have a chilling effect on the ability of government to attract dedicated civil servants. The vast majority of municipal elected officials are unpaid volunteers or receive nominal compensation in an effort to serve their communities. Moreover municipal government is not a for-profit enterprise, but rather one based on concern and commitment to the lives of the families it serves. I believe that at this point it is important to emphasize this as a key difference between the public and the private sector employer.

Third, this bill requires "one-size fits all" joint employer-employee safety committees. Many cities use similar committees to good effect and cities in Washington and Oregon have experience with committees on a state-required basis. However these committees are not established under as rigid standards as proposed under this legislation. Since every employer would be required to establish a committee at every worksite with 11 or more workers the requirements for municipal governments could mount rapidly, particularly considering the multiple locations of such public facilities as schools, fire and police stations and public works facilities. The City of Houston, for example, would be required to establish worker safety committees at over 400 worksites.

The final, and perhaps most compelling factor to cities and towns, is where we will find the money to implement this mandate. The additional funding to comply

with the new OSHA regulations in this legislation, not to mention the overhaul of current non-OSHA worker safety programs like the one in my city, has not yet been estimated by the Congressional Budget Office. I believe this data is essential to an informed discussion of OSHA reform.

Notwithstanding the lack of cost estimates to local governments, I can tell you that it will cost the City of Augusta, and other cities like it, a great amount of taxpayer money. I know that at the Federal level you face the neverending challenge of balancing the Federal budget. You understand that the budget process requires that as more dollars are spent on one priority, fewer are available for other priorities. Cities too must balance budgets. We are especially concerned that the new Federal requirements would force many cities—especially central and rural cities with the greatest distress and highest crime rates—to make cuts in municipal programs, personnel, and services critical to the health and safety of all citizens.

In summary, we share with you, Mr. Chairman, your concerns for our Nation's workforce. We would work together for cost-effective programs that focus scarce resources on the most central safety issues. We want to make clear that we cannot afford to risk the safety of our workforce. Please join with us to examine thoroughly the safety practices and procedures currently in place in the public sector. Again, I do not see how you can proceed in this discussion without such information.

The CHAIRMAN. Mr. Sweeney, we are glad to have you with us.

Mr. SWEENEY. Thank you, Senator.

My name is John Sweeney, and I am president of the Service Employees International Union, AFL-CIO. I appreciate this opportunity to testify on an issue of vital importance to SEIU members, the Comprehensive Occupational Safety and Health Reform Act.

On behalf of the one million members of SEIU, I also thank you, Mr. Chairman, for your leadership and vision in bringing S. 575 to the forefront of this committee's legislative agenda.

More than half of SEIU's one million members work in the public sector for local, State and Federal Governments. SEIU strongly supports those provisions of S. 575 that will bring OSHA protection to all public employees. We were disappointed to see that the Republican alternative does not do the same. After more than 2 decades, all public employees are still not guaranteed the right to a safety and health workplace. Nearly 7.5 million public employees are excluded from the law's protection.

Today, only 23 States cover public employees through OSHA-approved States plans. Hundreds of thousands of these workers are SEIU members who work for Federal, State and local governments.

Our members work in hazardous occupations as health care workers, social service workers, police officers, firefighters, corrections officers, sewage treatment plant workers, road crew workers, and State mental health institution workers.

What many people do not realize is that Government work is hazardous work. In 1992, public employees had the highest number of workplace fatalities of any industrial sector. According to the National Safety Council, 1,700 public employees died on the job in 1992—more deaths than mining or construction.

Public employers should not get special treatment. Labor standards should cover all employers. Indeed, Congress and the courts have steadily extended the coverage of the FLSA, Social Security, and Medicare to include State and local employees. The Family and Medical Leave Act and the Americans with Disabilities Act also cover public employees. Title 7 of the Civil Rights Act was amended by Congress to cover State and local employees. Health care workers in the public sector urgently need OSHA protection.

City-run Grady Memorial Hospital in Atlanta, GA is one of the epicenters of the TB epidemic. In fact, the tuberculosis epidemic is

concentrated in public hospitals, clinics, and prisons. If public employees continue to be exempted from OSHA coverage, then those health care workers in greatest need of protection would not receive it.

I would also like to emphasize that OSHA coverage for public employees is not an unfunded mandate. OSHA coverage is a question of the obligations of Government as employers, not as providers of Government services. Opponents are attempting to revive the theory that the Federal Government cannot regulate States and localities as employers, an argument that has been settled by the U.S. Supreme Court.

Finally, I would like to point out that failure to cover public employees costs public employers money. According to data from the National Safety Council, public employee fatalities alone cost more than \$1.3 billion each year. Disabling work-related injuries cost State and local governments an additional \$14 billion each year.

OSHA coverage for public employers is a matter of simple justice, and it is long overdue.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Sweeney follows:]

#### PREPARED STATEMENT OF JOHN SWEENEY

My name is John Sweeney and I am president of the Service Employees International Union, AFL-CIO. I appreciate this opportunity to testify on an issue of vital importance to SEIU members, the Comprehensive Occupational Safety and Health Reform Act. On behalf of the one million members of SEIU, I also thank you, Mr. Chairman, for your leadership and vision in bringing S. 575 to the forefront of this Committee's legislative agenda.

The Service Employees International Union is the fourth largest union in the AFL-CIO, and the largest union representing service workers. The breadth of our experience with safety and health comes from the wide range of workers we represent in service occupations like building service and maintenance, health care and office support work. Typical job titles for our membership include nurses, nursing home aides, social service workers, janitors and clerical workers.

Our membership also spans the public and private sector workforce. Of our one million members, more than half work in the public sector for local, state and federal governments. Effective and comprehensive health and safety protection for all workers, including public sector workers, is a top priority for this union. Guaranteeing equal protection for both public and private sector workers under the OSHA Act is essential.

The Occupational Safety and Health Act is one of our nation's most important and significant labor standards. The principle it embodies is one which no one can deny is of vital importance—the fundamental right of workers to work in a safe and healthy workplace. It is imperative that this right be extended to all working Americans—no matter who their employer is.

When the Occupational Safety and Health Act was passed, we had great hope that this landmark legislation would bring about significant changes in safety and health protection for workers. Indeed, there has been improvement. Fatalities from workplace injuries declined from 14,000 in 1972 to 8,500 in 1992. Exposure to some serious hazards have been reduced. Expanded efforts and programs to address job safety hazards have been undertaken by more employers and unions.

But progress has been much too slow in comparison to the scope of the problems and the toll remains unacceptably high. Every day nearly 40 workers are killed on the job by safety hazards alone. According to the Bureau Labor Statistics, 8.4 million workers suffered occupational illnesses and injuries in 1991. And, because the BLS does not systematically collect data on public employees, this number excludes public employees. It is estimated that another 70,000 to 100,000 workers die prematurely each year from occupational diseases resulting from exposure to toxic substances.

Service industries and occupations, both public and private sector, have been neglected for too long. There has been a tendency to believe that illness and injury

occur only in industrial occupations. This is simply not so. In fact, today injury and illness rates are higher in the service and public sector than in the industrial sector.

Occupational safety issues that have not been addressed are now critical emergencies-witness the striking rise in health care workers becoming occupationally infected with tuberculosis. Newer problems like ergonomic hazards, infectious diseases, indoor air contaminants, and on-the-job physical assault demand immediate attention. The proposed requirement for expedited standard setting and timely response to petitions for OSHA standards, will help to remedy this neglect.

Delays in passing the Comprehensive Occupational Safety and Health Act since its introduction in 1992 have cost us dearly. During those two years, the human and financial cost of occupational injury and illness has continued to rise. We cannot afford to wait any longer.

#### COVERAGE OF PUBLIC EMPLOYEES

At SEIU we continue to believe that the leading deficiency in the current OSHAct is the exclusion of nearly 7.5 million public sector employees from the law's protection. As a consequence, millions of workers in the United States continue to be denied the basic right to a safe workplace.

In 1992, public employees had the highest number of workplace fatalities of any industrial sector. According to the National Safety Council, 1700 public employees died on the job in 1992, more deaths than occurred in the mining or construction industries. The inclusion of public employees in S. 575, will make a significant dent in reducing rates of illness and injury among public employees and will reduce the attendant costs.

The failure to include public employees in the protections of the OSHAct flies in the face of the trend toward applying major federal labor standards equally to private and public sector employers. During the 1980's, Congress and the courts have steadily extended the coverage of the Fair Labor Standards Act, Social Security, and Medicare to include state and local employees. The Family and Medical Leave Act also covers public employees. Other examples include Title VII of the Civil Rights Act, which was amended by Congress to cover state and local employees, as well as the Americans with Disabilities Act.

When the OSH Act was passed, Congress intended for its coverage to be as broad as possible. It is noteworthy that the Act does not exempt small employers nor does it place other similar limitations on the coverage of private employers that can be found in many other labor standards statutes. States and their subdivisions were excluded from the definition of employer because of concern about constitutional challenges. However, the desire of Congress to protect these employees is clearly evidenced by the requirement that they be covered when and if a state chooses to adopt a state plan. Today, twenty-three states cover public employees through OSHA-approved state plans.

When the OSHAct was enacted in 1970, injury rates were higher in the public sector than in many parts of the private sector. For example; injury rates for municipal employees in 1967-69 were almost four times higher than the all industry average during that period. Notwithstanding this fact, public employees were exempted from the Act. Today, public employees suffer 10(20 percent more injuries and illnesses than do their private sector counterparts. Almost 25 years of consistently higher than average rates of illness and injury among public sector workers sends us a message that we cannot ignore.

#### PUBLIC EMPLOYEES NEED OSHA PROTECTION

As a union representing both the public and private sectors, SEIU is in a unique position to evaluate the inequalities in coverage between these two groups of workers. Two workers in the same industry, in the same city, doing the same job can be given vastly different degrees of protection from health and safety hazards at work.

Who is affected by public employee exemption from OSHA protections? Hundreds of thousands of these workers are SEIU members who work for federal, state, and local governments. Our members work in hazardous occupations as health care workers, social service workers, police officers, fire fighters, corrections officers, sewage treatment plant workers, road crew workers, and state mental health institution workers.

Of great concern to us is the fact that thousands of our members who work in public health care facilities are excluded from OSHA coverage. These frontline health care workers will not be covered by OSHA's new blood borne pathogens standard simply because they are employed in the public sector in states that do not choose to protect them. Add to this the reality that our health care workers in

public hospitals are also at increased risk of exposure to tuberculosis. If these at-risk health care workers continue to be excluded from OSHA coverage, they would not be covered by any OSHA TB standard when it is implemented.

SEIU members in California have benefited from the protections of CALOSHA, the states' plan to protect public sector workers. SEIU represents the majority of state and county workers in California. Their experiences demonstrate the value of public employee coverage in preventing workplace accidents or in correcting the conditions from which they arose.

Mike Hayworth, a member of SEIU's Local 715, in Santa Clara CA, who works as a custodian for the County, can attest to this. Part of Mr. Hayworth's job required him to mix batches of chemicals for use in boilers in county buildings. The problem was that there were no emergency washing facilities available to Mr. Hayworth or his co-workers. In August of 1993, when employees threatened to notify CALOSHA about the absence of eye wash or shower facilities, the county quickly took action and installed washing facilities.

One member involved in this incident told us that, "just the existence of CALOSHA is worth a lot. Even if county employees never call them, they are there as a resource and our employer knows it." The county government remedied this dangerous situation because a state OSHA program was in place. Conversely, in states without OSHA coverage, public employers know they can ignore OSHA standards—without fear of sanction.

Implementation of work process changes is a critical form of prevention. One of our members, also a member of SEIU Local 715, lost part of his finger in a piece of machinery in a county-run sewage treatment plant in Fremont, CA. A sign was actually posted next to the piece of equipment instructing workers to put their hands in the machinery to operate it. CALOSHA was called in by county employees after the accident occurred and the county government was cited. CALOSHA took a good look around the plant while they were there, and in the end the treatment plant safety program was entirely overhauled—no doubt preventing other accidents waiting to happen.

But, many SEIU members cannot avail themselves of OSHA protections because their states have elected not to develop a plan for protecting public sector employees. These workers do not fare as well as their fellows in states that do cover public employees.

Steve McNally is no longer here to tell us what it means to work without the benefit of safety and health protection. Mr. McNally, a member of SEIU Local 285, was killed at the age of 34 while working on a highway crew to repair roads for the Commonwealth of Massachusetts. Mr. McNally died of multiple injuries due to trauma as a result of being struck by a truck while patching potholes on I-95. A co-worker who was at the scene explained that there should have been more people working at the site and that there should also have been cones, signs and lights set up to protect workers at the site. Mr. McNally was unlucky enough to be working for a road maintenance crew in Massachusetts, a state without an OSHA-approved state plan.

Inclusion of public employees cannot simply be left to the whim of a state that calculates whether it is worthwhile to protect its own employees. Because he was a public employee, Mr. McNally was forced to work under more hazardous conditions than his private-sector counterparts.

Also in Massachusetts, state road crew workers were routinely exposed to toxic chemicals while cleaning equipment and applying paint to roadways. OSHA has a regulation that would protect these workers if only public sector workers in Massachusetts were under the OSH Act's jurisdiction. Only through the insistence of their SEIU local union, and not through the protection of any health and safety laws, were the workers successful in convincing management to institute a training and screening program. If these workers had been covered by OSHA, they would have been protected sooner.

Other Massachusetts public works employees have not been as lucky. Bridge tenders are required to use ladders over water on bridges that exceed thirty feet in height without any fall protection. In a Marlboro, Massachusetts, garage, mechanics and laborers at the towns' Department of Public Works were required to cut asbestos covered water pipes without the benefit of any protections. While SEIU attempted to convince management to provide protective equipment, they refused to provide any, including respirators.

#### PUBLIC EMPLOYEES NEED COMPREHENSIVE OSHA REFORM

Comprehensive OSHA Reform will bring much-needed improved health and safety protection to public employees in state-plan states. Although it is our belief that a

state plan protecting public employees is better than no coverage for these workers, we also recognize that state plans have inherent weaknesses. Requirements set out in these state plans are checked, and are often less stringent than the Federal OSHA.

In a number of state-plan states, OSHA protections for public sector employees are weaker than those for private employees. For example, in California, the State as an employer can be cited for OSHA violations, but it cannot be fined. In contrast, in the state of Washington, the government as an employer can be cited and fined for OSHA violations.

Our members in Local 660 in Los Angeles have had extensive experience with the consequences of this inconsistency. When CALOSHA finds a violation in a private-sector hospital of the employer's obligation to prevent employee TB exposure a fine can be imposed.

In contrast, when members of the same local union who work in a public hospital request an OSHA inspection for a more serious violation, (i.e., failure to maintain negative air pressure in a TB isolation room) CALOSHA may cite the public hospital for a violation, but cannot attach a fine. As a result, the public hospital may be cited repeatedly for the same serious violation with no threat of penalty, while a lesser violation is likely to be corrected promptly in a private hospital that can be fined for OSHA violations. Our members can cite examples of serious violations that go uncorrected because the employer has no incentive to do so.

More than three million federal employees are also excluded from the OSH Act's full coverage. The 1980 Executive Order extended OSHA standards to federal agencies but for all intents and purposes is virtually unenforceable. While OSHA can inspect federal workplaces, it has no authority to penalize agencies or require the correction of hazards in federal workplaces. As a result, documented hazardous conditions and standards violations go uncorrected for years.

The failure to permit fines and penalties in public sector enforcement reduces the effectiveness of the protections provided to public employees. The comprehensive OSHA reform as proposed in S. 575 will institute citations and fines in all public sector workplaces.

#### INCIDENCE OF TUBERCULOSIS AMONG PUBLIC SECTOR HEALTH CARE WORKERS

The Comprehensive Occupational and Safety and Health Act will expedite the enactment of needed safety and health standards. The critical problem of worker exposure to tuberculosis infection clearly illustrates the need for a more streamlined and responsive standards-setting process. It also illustrates the necessity of including all public employees under OSHA's protection. To exclude them would be to disregard worker populations most in need of these protections. The tuberculosis epidemic that is spreading in our nation is concentrated in public hospitals, clinics and prisons where health care workers are exposed to a disproportionate number of TB patients. If public employees continue to be exempted from OSHA coverage, we will have created a perverse scenario; precisely those health care workers in greatest need of protection against exposure to TB infection would not receive it.

In our own union experience we have seen significant examples of successful partnerships between government and employees in states with OSHA protections for public employees. As a result of effective cooperation, our members in the Public Employees Federation of New York (PEF) have worked with state officials to develop a model TB education and training program.

In 1991, after a number of prisoners and a correction officer in the New York State prison system died from an outbreak of multi-drug resistant TB, members of PEF and officials from the N.Y. State Division of parole, initiated a program to educate and screen all 2,000 employees within the prison system. As a result, an effective TB testing and education program was implemented and every employee in the state department of corrections was screened. Without a state worker safety and health protection program in place, this model cooperative program would not exist, and rates of TB transmission would not be reduced.

Public sector health care workers are becoming infected with tuberculosis at an alarming rate. Laura Hopkins, a 47-year-old nurse was infected with TB in the Summer of 1991, while working at a state run teaching hospital in upstate New York. While Ms. Hopkins was undergoing orientation, she had contact with an AIDS patient who had a highly contagious form of Tuberculosis. As many as 60 employees may have been infected with tuberculosis from this single patient. Ms. Hopkins said that this TB patient was on the hospital floor for close to a month as was not placed in a TB isolation room, as he should have been. Looking back, Laura Hopkins wonders, "I don't know why he was allowed to be on that floor and I never will. We



had negative pressure rooms in the hospital and my guess it that they were full. I do know it was a major, major error leaving him there."

Unfortunately, Ms. Hopkins' tuberculosis was not correctly diagnosed until May, 1992. She required intensive treatment for the next eight months. In January 1993, Ms. Hopkins' TB became active again and she developed cavities in both of her lungs. Ultimately, she was forced to undergo the surgical removal of the right upper lobe of her lung. Since that time, she has been receiving worker compensation from the state hospital, including two-thirds of her salary. Today, Ms. Hopkins reflects that "I'm not the only health care worker who has TB, and it's only going to get worse if changes are not made."

The spread of tuberculosis is only one example of an occupational hazard that affects public sector employees disproportionately. The inequities faced by public employees are glaring and irrational. In Texas, which does not have a state plan, workers at a public school district spray toxic insecticides on the school grounds, but do not have access to bathrooms or washing facilities. They work on evenings and weekends, and their employer will not unlock a school door for them to use the facilities, nor will it provide other portable facilities. The workers are told to drive to the nearest fast food restaurant to use the rest rooms to wash the toxic chemicals off their clothes and bodies. OSHA regulations for farm workers require employers to provide lavatories with toilets and hand washing sinks, but these regulations offer no assistance to school district workers in Texas, solely because their employer is a local government.

#### WORKPLACE VIOLENCE IN THE PUBLIC SECTOR

Workplace violence also takes a special toll on public employees. Increasingly, our members are the victims of violence in state social service agencies, and at state mental health facilities. In New York state during 1992, one in four occupational injuries among state employees was the result of assault on the job, or being struck by an object or individual.

Last December, in a highly publicized case, two members of SEIU local 1000, California State Employees Association, were killed and four others employees were injured in Oxnard, CA, when a disgruntled client went on a shooting rampage in the local unemployment office. Employee requests for increased security measures at that facility had gone unheeded for years, and even as recently as two weeks before the incident.

#### ERGONOMIC HAZARDS IN THE PUBLIC SECTOR

Nursing home workers, whether employed by private companies or county facilities, frequently develop debilitating back injuries. Nursing home workers suffer a higher rate of back injuries than any other occupational group. Generally, only the workers employed by private companies are protected by OSHA.

SEIU and its local unions in Pennsylvania have been working with OSHA to develop health and safety programs in the private nursing homes to reduce the high rate of back injuries. In the county nursing homes, however, the workers have no such recourse because Pennsylvania is another state without OSHA coverage for public employees.

One worker who has had personal experience with the consequences of this approach is Irene Klemick, a member of SEIU Local 1199P. Ms. Klemick worked for 8 years at a county run nursing home in Pennsylvania. Ms. Klemick tells us about the crippling epidemic of back injuries in nursing home workers and cites her own situation. Ms. Klemick experiences intense pain every day as a result of her herniated disc, and suffers pain from hand and neck injuries also sustained while doing her work. Ms. Klemick tells us, "not only do I suffer physical pain but also emotional pain. I am not able to wear my crisp, white uniform and take care of my beloved residents. And my grandchildren have learned that I can't lift them to hug them."

It is time to stop these tragedies from occurring. Public sector workers are not second class citizens. This loophole must be closed and OSHA coverage must be extended to all public sector workers. There has been some suggestion that coverage of public employee coverage should be phased in over a set period of time. We think this is a bad idea—coverage of public employees is long overdue and should not be held up any longer. We've already had a phase-in period of over two decades and twenty-seven states have yet to cover public employees through OSHA-approved plans.

## INADEQUATE PROTECTION OF PUBLIC EMPLOYEES IS COSTLY

Exclusion of public employees from the protections of the OSHAct is a fundamental inequity that cannot continue. This tragic omission of state and local governments workers is dangerous and expensive because each work injury is very costly. The National Safety Council estimates that, in 1993, each disabling worker injury cost \$27,000.

Failure to cover public employees is expensive—too expensive, in fact. According to data from the National Safety Council, public employee fatalities alone cost more than \$1.3 billion each year. Disabling work related injuries cost state and local governments an additional \$14 billion each year. This includes the cost of compensation for lost work time, administrative costs, medical expenses and disability payments. If improved safety and health protection for all public employees lowered the rate of injury and illness by ten percent, then states and localities would save \$1.5 billion each year.

Another way of estimating the potential savings to states and localities is by looking at the excess injuries and illnesses in the public sector. According to the National Safety Council, government employees suffer an overall injury rate and illness rate that is 10–20 percent higher than the private sector rate. Simply by bringing down the excess rate of injury and illness in the public sector to that in the OSHA-covered private sector, we could save two billion dollars each year.

Each of these estimates identify a potential savings of \$1.5 to \$2 billion per year. Because of the well established severity of under-reporting of occupational injuries, this is a highly conservative estimate. Researchers at the University of Michigan estimate that BLS, because of the recording methods that it employs, may under-report occupational injury by a factor of between four and nine times the actual rate. Further, it is important to note that these costs do not include the inestimable costs of grief and suffering borne by injured workers and their families.

Despite the clear financial benefits to the public sector of reducing occupational illness and injury, opponents of universal public sector coverage have raised the cry of “unfunded mandates.” This is a distortion of the concerns that state and local governments have raised about the burden of federally-mandated increases in services and programs that don’t carry federal funding. But OSHA coverage is a question of the obligations of governments as employers not as providers of government services. By misapplying the unfunded mandate slogan they are attempting to revive the contention that ‘the federal government cannot regulate states and localities as employers, an argument that has been settled by the Supreme Court.

## SAFETY AND HEALTH PROGRAMS AND COMMITTEES

We also want to let you know about our support of other key components of S. 575. We support provisions in the bill which require the use of labor-management safety and health committees.

It has been the experience of our members that their participation in joint health and safety committees helps to develop effective programs to reduce workplace injuries and illnesses. It is, after all, the workers who are hands on experts in matters of their own safety and health. They are in the best position to know the materials they work with and they often know the simplest ways to correct safety and health problems. A team effort of labor and management is needed to achieve the day-to-day improvements in job safety that will save lives and prevent injuries.

## STANDARDS

We support the sections of S. 575 that mandate a timetable for Agency activities in the setting of standards. The bill further mandates that OSHA issue final standards on key hazards by specified dates and requires public disclosure of communications with outside parties, including other government agencies. All interested parties will have the right to know when and why standards are initiated or when petitions for standard setting are denied.

We are pleased to note that this bill contains a mandated timetable that will speed up the standard setting process. In its twenty one year history, OSHA has promulgated only 22 major health standards and 38 safety standards. Permissible exposure limits for toxic air contaminants have been revised only once. It often takes years for OSHA to even acknowledge petitions or recommendations for standards. Once the agency does decide to act, the standard setting process is a lengthy one—usually taking about 5 years.

SEIU along with other unions representing health care workers, first petitioned OSHA for a standard to protect workers against exposure to HIV, hepatitis B and other bloodborne infection in 1986. The final standard was not released until five

years later, in December 1991, and not until Congress passed a law requiring it be released. In that interval, over 1,000 health care workers died from occupationally-acquired hepatitis B. Scores more contracted HIV virus during the same period.

Now, as the process gears up to develop a standard to prevent worker exposure to tuberculosis, we shudder to think of the number of health care workers who will become occupationally-infected with TB if the standard setting process is long and drawn out, yet again. We can't afford to wait five years to protect health care workers in the face of the TB epidemic.

#### OTHER CRITICAL PROVISIONS

We also support the Act in that it strengthens OSHA's ability to impose criminal penalties. We believe that such a provision is an essential option when the willful actions of an employer result in serious bodily injury or death.

The success of any workplace health and safety program is measured by the program's ability to reduce rates of injury and illness. To do this, injury and illness records must be kept. These records are particularly valuable in identifying any work processes of tasks which result in higher rates of worker illness and injury. Armed with this data base, remedial steps can be instituted. We call upon Congress to ensure that a reformed OSHA Act reinstates the injury and illness recordkeeping requirement in every industry. By so doing, employers and workers will have vital information for evaluating and planning workplace illness and injury prevention programs.

In conclusion, experience has shown that the Occupational Safety and Health Act is a law that has saved thousands of lives and prevented millions of injuries. However, serious omissions in who is covered by the law must now be addressed. Public sector workers must be afforded the same protection under the OSH Act as is guaranteed to workers in the private sector. Furthermore, greater worker involvement, a more timely and improved standard-setting process, extended injury and illness recordkeeping and improved coverage of multi-employer worksites will provide us with opportunities to meet the challenges which remain. Thank you.

Mr. SWEENEY. Senator, if I may be excused, I am chairing the meet that Mr. McEntee left earlier for, and it is with the chair of the Senate Finance Committee.

The CHAIRMAN. Certainly.

Mr. SWEENEY. Bill Borweagen, our safety and health director, would be happy to answer any questions.

The CHAIRMAN. Good.

Mr. SWEENEY. Thank you.

The CHAIRMAN. Thank you very much. I apologize to you for not excusing your earlier. It was good testimony and will be very helpful to us.

Mr. SWEENEY. Thank you.

The CHAIRMAN. Mayor DeVaney, do you think the legislation ought to apply to the Congress?

Mayor DEVANEY. I think, Senator, that certainly, if the legislation is going to apply to everyone, it should apply to the Congress. Our point, though, is that Government is different from the private sector, and our response time to emergencies is different; the way we have to handle and treat the public is different, just as the Congress is different as well. And we think that while we want to work to ensure the safety of our work force, just as those who work here in Congress, that there are ways to do it that perhaps are not as tough and as stringent as what is in this bill, taking into account the difference in the public sector work versus the private sector.

The CHAIRMAN. But I get from what you say that you would ensure that the Congress would be covered, but you want the municipalities not to be covered under the legislation.

Mayor DEVANEY. No, sir, I am sorry; perhaps I was misunderstood. I think that if there is a Government exemption, then it

should apply—that is my personal opinion—because we are different, and that whether it is the local or the State or at the congressional level.

The CHAIRMAN. Should we be required to be covered by the Americans With Disabilities Act?

Mayor DEVANEY. There are certain things that certainly I know from my own experience with the ADA—I have been mayor for 10 years now in Augusta—the ADA is an excellent piece of legislation, and it has been extremely costly to the city of Augusta, in the hundreds of thousands of dollars to comply with it. I think that after my experience with that, that is what scares me about this legislation and should scare other local governments.

The Congress did not provide us funds for that, and that is my concern. Whether or not the Congress is covered or not is its decision.

The CHAIRMAN. Well, I am just interested in whether, on various legislation that we pass around here—family and medical leave, the Americans With Disabilities Act, or this legislation—whether you think we ought to include Government or not. That is a debated item. There are constitutional issues. So as a matter of public policy, I was just trying to find out what your opinion would be.

Mayor DEVANEY. Mr. Chairman, I think each issue turns on its own merits, and yes, I think there are some where Congress should have included itself in addition to all governments, and there are some where Government as a whole should not be included, in a way that we can at least draw a distinction that perhaps we cannot draw in other legislation.

The CHAIRMAN. Mr. Lennes, you cover the State employees; is that correct?

Mr. LENNES. Yes, Mr. Chairman, we do.

The CHAIRMAN. And I guess you apply it even to your own office, is that right?

Mr. LENNES. Yes, Mr. Chairman. We just inspected ourselves and found a few violations. In fact, we inspected the State Capitol and found that our big bronze doors open the wrong way, so I suppose we could red-tag it as necessary.

The CHAIRMAN. So you have been able to do that successfully?

Mr. LENNES. Yes, Mr. Chairman. It is not without a few rough spots from time to time, obviously. But in our State, we look at this aspect of OSHA as essentially part of the risk management of overall workers' comp and just the total picture of the cost of containment. In fact, we fund our half of the OSHA expenditure, the half that is not paid for by the Federal Government, out of workers' compensation premiums rather than the State general fund, so we look at it purely as part and parcel of risk prevention.

The CHAIRMAN. Dr. Ruttenberg, would you like to give a comment on terms of Mr. Holt's financial assessment? If you could make a brief comment and then submit a more extensive evaluation, if you would.

Ms. RUTTENBERG. Over the last 20 years of the OSH Act, this debate has gone on about the kind of studies that have come from industry circles, where people are asked, knowing with full knowledge that there is a regulation pending over their head that might cost them some money, what the cost of that regulation might be.

In fact, I think it was you, sir, and Congressman Ford, who had the Office of Technology Assessment studying this very issue of the methodology of having people make these predictions out of interviews.

That study is showing some very interesting things. We know with vinyl chloride, we know with coke ovens, we know with grain dust, we know with cotton dust, that enormous dollar figures, in the billions and hundreds of millions of dollars, have been cited. And I could submit for the record in detail in case after case after case, when you do a retrospective study, you find that the costs are really quite low. And that is why in this study, as small and limited as it is, what we did was look at actual numbers and try to look at what happened in other States that had these experiences and what might happen in the future from that.

The CHAIRMAN. Thank you.

Senator Wellstone.

Senator WELLSTONE [presiding]. Thank you, Mr. Chairman, and I apologize to the panelists and to you, Commissioner Lennes, for having to go in and out.

I looked at your statement here and the comparison of the OSHA reform proposals and the Minnesota OSHA program, which dates back to—the inception was about 1973, as I understand, with our program.

Mr. LENNES. Right.

Senator WELLSTONE. Could you just give me your sense of the Minnesota experience—I do not want you to repeat what you said in your testimony—in terms of what really works well and how you see that blending in with this reform bill, because one of the reasons I was really pleased that you were going to come and testify here is that I think the more we can draw from the concrete experience, the better off we are.

Mr. LENNES. Senator, I think the facets of our system which, as you indicated, from the outset have covered public employees as well as private and has also provided for consultation as well as compliance, that have been most successful are those where we have seen a commitment that is shared between labor and management. And that is not new; there have been many companies that have had successful examples of that over the years. It has been accelerated by some new requirements that have come into the laws in 1990 and 1992, to require safety committees specifically and also to talk about other kinds of joint compliance efforts that have been mandated, and educational approaches.

We have seen that particularly where that has been done, where both labor and management have sat down and said, "We are just going to make this work," we have seen some huge successes, and I have a few examples that I have provided to the committee of a large construction company, and Friskies Pet Foods, Marigold Foods—and actually, there are hundreds. In fact, we are at a point now where it is a bureaucrat's nightmare in some respects, because we are having to ask private agencies to allow us to come in and be part of their safety educational programs; otherwise, they will leave us behind.

The enthusiasm to get the job done among groups like the Employers' Association and State Chambers, the Business Partnership

and others, is very, very strong. That is because they have seen that there is a profit to be made, in the literal and figurative sense.

Senator WELLSTONE. But it initially flowed from the requirement, though, that these committees be set up; correct?

Mr. LENNES. In large measure, yes. In some areas, some companies had just worked that way anyway; it might have been part of their collective bargaining agreement. But we have seen it mushroom significantly since the requirements were put in place. That is correct.

Senator WELLSTONE. And did you—and again, I really do apologize, and I have your testimony, and I will be a good student and read it all—the effect on the workers' comp—and some of the rest of you may want to talk about this as well—I have seen some interesting data from a variety of different States—what about the Minnesota model?

Mr. LENNES. As you well know, Minnesota is a State that is a relatively high workers' comp State, and it is a topic of concern from the perspective of the viability of our business, particularly in base productivity-type industries. But I have long told employers that if you wait for the legislature to drop your costs on their own, you are waiting for the second-best solution, because the best solution is to do it on your own, jointly, internally. And the evidence we have seen anecdotally, and as well on an overall basis, is pretty substantial that way. The companies that I have mentioned to you have cut their costs approximately in half or more by changing not just their approach to safety, but I think the notion of a shared commitment to a better workplace, which is a larger issue.

There was a study done that my friend Joe Dear could give you an example of up in Seattle, in the Boeing Company, where they were looking to see why different elements of their company had such widely differing internal workers' comp costs. And they found that pure safety accident frequency was a pretty substantial part of that, but by no means the only factor. The biggest factor was was there a shared sense of dedication to a safer workplace, and almost more than the incidence of the accidents themselves.

Overall in our State, we have seen some progress, too. since 1989, I think in that year, about \$2.36 per 100 as it is measured in workers' comp terms was spent for comp coverage, and by 1992, that is down to about \$1.94. That is a drop of 12 to 13 percent, and that is attributable, we believe, in large measure to these kinds of programs. We have not seen the change in the absolute benefits that would drive that.

Senator WELLSTONE. Commissioner, maybe I could just pick up on one question for all of you, and it will be my final question. And by the way, again, I do apologize. Before I ever came to the Senate, I would sometimes come up here to testify or whatever on things I was working on, and I could never understand why there were only one or two people, and I would go back home and say they had no interest and so on. And then people would come in and out, and I would tell Sheila and my children how impolite they were. Now I find myself doing the same thing; when I want to hear, and it is only because there was another engagement that I absolutely had to go to.

The point you just made, Commissioner, and maybe the other panelists will want to speak to it as well—it seems to me that this notion of really getting down to the workplace and having these joint committees—we are talking an awful lot about partnership. And it strikes me that I think having a healthy and safe workplace in and of itself is an important enough public policy goal, given what this all means in human terms, but above and beyond that, it would seem to me that to the extent that workers feel as though they are expendable as opposed to being a part of a partnership where you really work together jointly, that has an additional dividend in terms of higher level of morale, higher levels of productivity, all the kinds of things that I think we are really starting to focus on in our country as a way in which we can better compete.

I wonder whether perhaps each of you could elaborate on that point.

Mr. LENNES. I concur. I think we have some notions that need updating about the relative roles of labor-management and employers and employees. And as we move toward total quality management—which has been called into play here already today, I guess—but as we move toward that kind of a notion, some of those older ideas are going to have to fade away a little bit. In the example of the construction company that I gave you, where they have cut their costs approximately in half, they adopted a policy that said if someone comes into any foreman's office on the worksite or wherever and says, "We have a safety problem," we have one, as simple as that. No questions, no saying, "Oh, you are just trying to throw a wrench into it." Rather, we will take people seriously, we will treat them as though they are adults who have real concerns, and we will act on them.

And people told this company, "You will be jerked around a little bit. People will play games with you." That has not happened. And that is one of the major success stories I have seen. But I have seen that sort of thing replicated time and time again. I think people are waiting for a signal, both labor and management, that maybe it is time to work together on a shared outcome that is in both of their interests. And the reasons they do not, I think, are largely antiquated and artificial.

Senator WELLSTONE. Dr. Ruttenberg.

Ms. RUTTENBERG. It is obviously an issue that many of us care quite a lot about. In this study, as I interviewed injured workers—and I was focusing mostly on the city of Philadelphia to try to get a focus—there are just in here four folks cited with pension disability liabilities—we are not talking about the medical costs and the workers' comp that got paid and all kinds of other expenses—of close to \$2 million. And in each of those cases, I had safety inspectors go in, look at the situation, and not one of them would have cost more than \$100 to fix. So we had \$400 in expenditures versus \$2 million of just pension disability liability. And in every, single case—and these are just four; there are many others—folks had complained about those problems before they happened. Folks had said this is as problem, and somebody is going to get hurt. It cost very little to fix and an awful lot of money besides the human toll in suffering and crippling injury.

Senator WELLSTONE. We are now, over and over again, saying that whatever we do by way of health care reform—we keep talking about preventive health care, preventive health care, preventive health care.

Ms. RUTTENBERG. Yes. This is the first and best place to start on preventive care, because most of the accidents are preventable.

Senator WELLSTONE. Yes?

Mr. BORWEAGEN. I am Bill Borweagen, Senator. John Sweeney had to leave, and I am the health and safety director with the Service Employees. Quite frankly, Senator, taxpayers cannot afford to continue to not give OSHA coverage to their public employees. It costs more. We re a union that represents half and half public and private sector workers, and it is simple justice and equity.

When I have to answer a phone call, the first question I have to ask the member of the union or the union rep is: Is it a public sector or private sector worker, and are you in a State plan State, or are you not in a State plan State?

If they are not in State plan State, like Georgia, Pennsylvania, a lot of other States—the list goes on—they do not have the right to health and safety. It is a privilege that is given to them, I guess, as a public servant is the best way to describe it. We can no longer tolerate this inequity in the work force.

Senator WELLSTONE. A final remark?

Mayor DEVANEY. Thank you, Senator.

Going back to your question and to my testimony, I think that not only Augusta, but many of the cities and local governments across America, do try to involve our employees. It is very clearly stated in our policy, in the manuals. We feel that that is absolutely essential that they be involved. But at the same time, we have to as cities express concern over the cost, because as I mentioned, we must balance our budget by law, and we have to be careful how we pass those costs on to our constituents.

We are also concerned about the criminal penalty provision. Will it have a chilling effect on future elected officials, perhaps looking at that with a more cautious eye? And I think we simply have to look at the cost versus the benefit to local governments. Aren't we doing a lot of what we should be doing to care for our employees? As I said, they are not nameless faces. We know most of them by name, and we respect them.

Senator WELLSTONE. I thank you. I guess my conclusion would be that it seems to me that, even given some concerns—and we can keep speaking to those concerns and meet those concerns—there is a bit of a marriage here. On the one hand, there is the question of justice denied, and people ought to have a right to a healthy and safe workplace. On the other hand, there is another issue, which is that, as you said, Dr. Ruttenberg, this is very much a part of preventive health care; this should be considered very much a part of what we need to do by way of public health.

And from the fiscally conservative point of view of how we begin to get a handle on health care costs in the country, I think this fits right in there.



And then the third part is to the extent to which we can work together with committees and decentralize it, I think that just simply builds morale and leads to the kind of partnership that I presume we all believe in.

Well, I thank you all.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you all very much for your very helpful and informative statements. We are grateful to you.

[The information referred to and additional statements and material submitted for the record is retained in the files of the committee, due to the high cost of printing.]

The CHAIRMAN. The committee stands in recess.

[Whereupon, at 12:15 p.m., the committee was adjourned.]

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